



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	499 of 2024
Date of filing.:	09.04.2024
Date of first hearing.:	20.05.2024
Date of decision.:	03.09.2026

1. Santosh Kumar Singh
2. Sarita Singh
R/o II.no RZF-767/43, Street No. 8
Raj Nagar-II, Palam Colony,
New Delhi 110075

....COMPLAINANTS

VERSUS

M/s BPTP Limited
Regd Office at M-11, Middle Circle,
Connaught Circus,
New Delhi, 11000

....RESPONDENT

CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Mr. Rajan Hans, Counsel for complainants through VC
Mr. Hemant Saini, Counsel for the respondent through VC.

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of project, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park Elite Floors, Parklands, Faridabad.
2.	Nature of the project.	Residential
3.	REERA Registered/not registered	Not Registered
4.	Details of unit.	E-32-10, 876 sq. ft.
5.	Date of Allotment	24.12.2009



6.	Date of builder buyer agreement with original allottee	04.10.2010
7.	Due date of possession	04.10.2012
8.	Date of endorsement	16.07.2013
9.	Possession clause in BBA (Clause 4.1)	<i>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Floor to the Purchaser(s) within a period of 24 months from execution of floor buyer agreement or on completion of 35% of basic sale price and 20% of EDC & IDC. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be</i>



		entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 24 months, for applying and obtaining the occupation certificate from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser(s) with regard to the handing over of possession, and in the event the Purchaser(s) fails to accept and take the possession of the said Floor within 30 days thereof, the Purchaser(s) shall be deemed to be custodian of the said Floor from the date indicated in the notice of possession and the said Floor shall remain at the risk and cost of the Purchaser(s).
10.	Total sale consideration	₹ 18,13,086/-
11.	Amount paid by complainant	₹23,65,468/-
12.	Offer of possession	16.03.2017
13.	NOC for fit outs	14.09.2018
14.	Actual physical possession	23.01.2020
15.	Occupation Certificate	07.09.2018

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of the present complaint are that the original allottee had booked a unit in the project of the respondent namely "Park Elite Floors"

Parklands, Faridabad, Haryana by depositing an amount of ₹2,00,000/- on 06.06.2009. Vide allotment letter dated 24.12.2009 Unit bearing no. E32-10, First Floor admeasuring super built up area of 876 sq. ft. was allotted to the original allottee. Copy of Allotment Letter dated 24.12.2009 is being annexed as Annexure P-1.

4. That on 04.10.2010 a pre-printed, one sided, arbitrary and unilateral Floor Buyers Agreement was executed between the original allottee and the respondent.
5. That as per Clause 4.1 of Floor Buyers Agreement, the possession of the said unit should have been delivered within 24 months from the date of execution of the agreement, thus the due date of possession works out to 04.10.2012. Copy of Floor Buyers Agreement dated 04.10.2010 is being annexed as Annexure P-2.
6. That in Suryakant Yashwant Jadhav & Anr. v. Bellissimo Hi-Rise Builders Pvt. Ltd. & Ors., the MahaRERA Appellate Tribunal has held that specified "Date of Possession" is binding on the developer and not affected by "Grace Period" clauses under agreement For Sales, thus the respondent is not entitled to claim any grace period for 180 days.
7. That as per Clause 1.2 and Annexure for charges, of the said agreement, the total sales consideration was Rs.18,13,086/-.
8. That on date 16.07.2013 the agreement to sell was executed between the original allottee and the current complainants whereby the latter

purchased the said unit for the total consideration of Rs.22,00,000/- from the original allottee. Copy of Agreement to Sell dated 16.07.2013 is being annexed as Annexure P3.

9. That on date 16.07.2013 the unit was transferred from original allottee to the present complainants, and the respondent company endorsed the booking/allotment of the said unit in the name of present complainants with immediate effect via a Nomination letter. Copy of Nomination Letter dated 16.07.2013 is being Annexed as Annexure P-4
10. That as a subsequent buyer, the present complainant stepped into the shoes as an allottee on the date 16.07.2013.
11. That on date 17.07.2013 Tripartite Agreement was executed between the complainants, respondent & HDFC BANK as the complainants wanted to avail the home loan facility from the HDFC BANK. Copy of Tripartite Agreement dated 17.07.2013 is annexed as Annexure P-5.
12. That the lead complainant has already paid the amount of Rs 23,65,468/- as per the receipts issued by the respondent, which is more than 100% of the total flat cost as agreed in the agreement, The payments have been made on following dates as per the table given below:-

S.no.	Date	Amount
1.	06.06.2009	Rs. 2,00,000/-
2.	21.08.2009	Rs. 1,78,994/-
3.	21.10.2009	Rs. 1,73,051/-
4.	11.10.2010	Rs. 1,55,870/-
5.	31.03.2011	Rs. 1,97,933/-



6.	03.05.2011	Rs. 1,77,594/-
7.	28.07.2011	Rs. 73,063/-
8.	30.08.2011	Rs. 2,96,615/-
9.	19.02.2013	Rs. 1,80,000/-
10.	19.02.2013	Rs. 1,80,000/-
11.	03.08.2015	Rs. 2,15,718/-
12.	03.05.2017	Rs. 1,56,291/-
13.	03.05.2017	Rs. 1,23,820/-
14.	03.05.2017	Rs. 56,519/-
Total		Rs. 23,65,468/-

Copies of the Payment Receipts of Various Dates and Statement of Account are annexed as Annexure P6 (Colly).

13. In the matter of Saurabh Mehrotra Vs, CCI Projects Pvt Ltd, Complaint no.CC006000000078611 decided on 06.08.2020 Before Maharashtra Real Estate Regulatory Authority, it was held that just because home buyers continued to pay even after the promised possession date had lapsed, they had not "acquiesced" and not consented to the delay in possession.

14. That on 16.03.2017, the respondent issued an illegal letter of possession to the complainant despite the unit not being ready for actual possession and that to before the receipt of Occupancy Certificate. Copy of the letter of possession dated 16.03.2017 is being annexed as Annexure P-7.

15. That on 14.09.2018 the respondent issued the No Objection Certificate letter for the fitout possession. Copy of NOC letter for fitout possession dated 14.09.2018 is being annexed as Annexure P-8.

16. That complainants wrote many emails and contacted the respondent in person too for the possession of the unit many times. Despite repeated reminders to fulfill their obligation, the respondent failed to do so. Copy of email trails (2018-2020) requesting for update for the handover of possession of the unit is being annexed as Annexure P-9.
17. That eventually, after numerous requests, the actual vacant possession was only granted on 23.01.2020.
18. That on 22.11.2019 and 29.11.2019 complainants had also purchased the Stamp paper amounting to Rs.1,73,000/- vide DD No. 159336 and Rs. 11,000/- vide DD No. 046490 for the purpose of the registry but till date the respondent has not executed the process of registry even after taking the money for the same. Copy of the Receipt of Amount paid for Stamp Paper is being annexed as Annexure P-10.
19. That also vide possession letter dated 16.03.2017 the respondent has also increased the super build area from 876 sq mt to 1047 sq ft that is the increase of 16.3% for which the complainants paid an extra amount to the respondent under distress.
20. That following the offer of actual possession on 23.01.2020, the complainants have continually urged the respondent to carry out the conveyance deed and proceed with the registry both vide emails dated 18.03.2020, 04.01.2022 and 31.03.2023 and also verbally. However, no communication has been received from the respondent regarding this

matter till date. Copy of email trails requesting for executing of conveyance deed is being annexed as Annexure P-11.

21. That the complainants have invested their hard-earned money and bought this unit for personal use, but due to respondent's delay in handing over the possession, the complainants are suffering a lot.
22. That the respondent is liable to pay a delay penalty charge to the complainants for their hard-earned money invested in the said unit
23. That as per Section 11(4) of the RERA Act 2016, the promoter shall be liable to abide by the promises and agreement made under the agreement of sale or any other such document.
24. That as per section 18 of the RERA Act, 2016, the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottees of an apartment, building or project for a delay or failure in handing over such possession as per the terms and agreement of the sale.
25. That no compensation is sought by the complainants in the complaint to the honorable authority and the complainants reserve the right to approach the adjudicating officer to claim the right of the compensation.

C. RELIEF SOUGHT

26. That the complainants seek following relief and directions to the respondent:-



- i. Pass an appropriate award directing the Respondent to provide a copy of Occupational Certificate of this particular unit.
- ii. Pass an appropriate award directing the Respondent to execute the Conveyance deed in the favor of the complainants and proceed with the registry.
- iii. Pass an appropriate order directing the respondent to provide Delayed Possession charges from the due date of Nomination in his favour i.e 16.07.2013 till the actual Valid and legal Possession i.e 23.01.2020 or date of receipt of OC of this unit whichever is later. (Justification: - Section 18, Rule 15).
- iv. Pass an appropriate order directing the Respondent to refund the amount of Rs. 50,000/- paid as club membership fees as no club is present at the site.
- v. Pass any other relief/direction which the Hon'ble Authority deems fit and proper in the facts and circumstances of the present complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 21.10.2024 pleading therein:



27. That the original allottee, Ashwani Sareen, expressed his interest to purchase a unit in the project of respondent known under the name and style of 'Park Elite Floors'. Then consequently, the Original Allottee was provisionally allotted unit no. E32-10 on the First Floor admeasuring 1047 sq. ft. based on the tentative layout plan vide Allotment Letter dated 24.12.2009. A copy of the Allotment Letter dated 24.12.2009 is annexed as Annexure R2.
28. That the Original Allottee mutually, willingly, and voluntarily entered into a Floor Buyer's Agreement on 04.10.2010. At this stage, it is pertinent to highlight that the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the FBA. A copy of the Floor Buyer's Agreement dated 04.10.2010 is annexed as Annexure R3.
29. That it is pertinent to highlight that it was agreed between the Parties that the area of the Unit is tentative and subject to change, as also agreed under the FBA. Original allottee had executed an undertaking and affidavit duly agreeing to the tentative nature of the unit and layout plan. Copies of the undertaking and affidavit are annexed as Annexure R-4.
30. That original allottee requested the respondent for the transfer and endorsement of the said unit to the complainants. Unit was endorsed in favor of complainants. Copy of endorsement form dated 16.07.2013 is annexed as Annexure R-5.

31. That the Complainants being subsequent buyers, have no right to seek delay possession charges. That at the time of nomination of the Complainants, the Complainants were very well aware with the actual status of the Project and having knowledge of the existing status, the Complainants willingly and voluntarily purchased the unit in the project of the Respondent. That such prior knowledge, willing and self-initiated purchase of the Complainants, without any protest, amounts to acceptance of the existing circumstances and the Complainants cannot be allowed to reap benefits by extracting monies from the Respondent and forgoing their complete satisfaction against the Unit. Hence, the Complaint is liable to be dismissed with costs against the Complainants. The Hon'ble Supreme Court has held in Laureate Buildwell Pvt. Ltd vs. Charanjit Singh 2021 SCC OnLine SC 479 that:

"The nature and extent of relief, to which a subsequent purchaser can be entitled, would be fact dependent.

.....

Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat."

32. Moreover, it is submitted that Maharera in Sandeep Sahcrao Valase Vs. Glomora and Ors. Complaint No. CC006000000193435; Constructions MANU/RR/0189/2021 had, in a case filed by the subsequent allottee, held that the complainants are not entitled to delay possession charges under section 18 of the Act. It has also been noted by this Hon'ble RERA



Authority, Gurugram in Nisha v Emaar HREERA-804-2022, order dated 08.09.2022 that in such cases, the delay possession charges, if any are payable from the date of nomination and not from the original due date.

33. That as per clause 4.1, the due date was proposed to be within 24 months from the date of the execution of the Floor Buyer's Agreement or on completion of 35% of the Basic Sale Price along with 20% of IDC and IDC by the Purchaser (s), whichever is later along with a grace period of 180 days for applying and obtaining the occupancy certificate, however, the same was subject to the allottees having complied with the terms and conditions of the Agreement, force majeure events and other circumstances beyond control of the respondent.

34. That the construction of the Unit was hampered due to other circumstances beyond the control of the company, the benefit of which is bound to be given to the Respondent in accordance with clause 13 of the FBA.

35. That without prejudice to the submissions of the Respondent that no delayed possession charges should be allowed to subsequent buyers, it is submitted that if the delayed possession charges are being allowed to the Complainants same should be allowed by considering the due start, from the date of endorsement of the unit in the name of the Complainants, and not from the buyer's agreement.



36. That it is also submitted that in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the framing of modern mineral concession rules. Reference in this regard may be taken from the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said Project became scarce. The Respondent No. 1 was faced with certain other force majeure events including but not limited to the non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High

Court of Punjab & Haryana and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of materials difficult but also raised the prices of sand/gravel exponentially. It was almost for 2 (2) years that the scarcity as detailed aforesaid continued, despite which, all efforts were made and materials were procured at 3-4 times the rate and the construction of the Project continued without shifting any extra burden to the customer. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

37. That from the facts indicated above and documents appended, it is comprehensively established that a period of 30 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of aforesaid Orders by the statutory authorities. It is submitted that the All the circumstances stated hereinabove come within the meaning of force majeure in terms with the Agreement.

38. That in accordance with the circumstances stated above, the present complaint is liable to be dismissed. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment against the Unit for which the demands were raised and reminders were issued in case of no-timely payment.

39. That Respondent has complied with all of its obligations, not only with respect to the Buyer's Agreement with the Complainants but also as per the concerned laws, rules, and regulations thereunder and the local authorities. Despite innumerable hardships being faced by Respondent, Respondent completed the construction of the Project and offered the possession of the Unit to the Complainants on 16.03.2017. It is pertinent to mention that vide letter dated 16.03.2017 regarding the offer of possession, the Complainants were asked to make the requisite payment based on the Statement of Final Dues and complete the documentation required to enable the Respondent to initiate the process of handover of the unit. The Respondent had also issued the no objection certificate for giving possession for carrying fit-outs dated 14.09.2018 to the Complainants and the unit has been ready for possession however the Complainants had failed to take possession of the unit. That it is submitted herein that the Respondent had duly communicated to the Complainants that the *"any fresh incidence and/or revision in Stamp Duty/taxes shall be payable by you before execution of conveyance deed"*. A copy of the Offer of Possession dated 16.03.2017 is annexed as Annexure R7. A copy of the no objection certificate dated 14.09.2018 to the Complainants is annexed as Annexure R8.
40. That the complainants were handed over the maintenance and service agreement on 12.09.2018, however, the Complainants have failed to

execute the same till date. A copy of the receiving of the maintenance and service agreement on 12.09.2018 is marked and annexed as Annexure R9.

41. That there was a delay in the actual possession due to the failure of the Complainants to make timely payment. Moreover it is submitted that till date the Complainants have failed to make the payment towards the unit of Rs. Rs.1,46,000/- and the maintenance dues of Rs.155860 along with Electricity charges of Rs 5659/-. Copy of recovery letter dated 21.09.2024 is annexed as Annexure R-10.

42. Moreover, it was agreed between the parties that the Complainants shall take possession of the unit within 30 days of issuance of the offer of possession to the Complainants and make the payment of the balance sales consideration of the unit as per clause 4.1 of the FBA. That it was understood by the Complainants that they shall not be entitled to the possession of the unit until the complete payment along with interest and other charges including but not limited to the maintenance charges as per the FBA has been paid by the Complainants.

F.ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENT

43. I.d. counsel for complainants and respondent reiterated the submissions as made in their pleadings.



44. Vide order dated 14.05.2026, liberty was given to respondent to place on record copy of occupation certificate dated 07.09.2018. As per office record, occupation certificate dated 07.09.2018 has been placed on record in registry on 02.09.2026.

G. ISSUES FOR ADJUDICATION

45. Whether the complainants are entitled to the reliefs sought in terms of Section 18 of Act of 2016? If Yes, the quantum thereof.

H.OBSERVATIONS OF THE AUTHORITY

46. As per facts and circumstances, original allottee in this case was initially allotted unit bearing no. 1-32-10 , measuring 876 sq. ft. in the project being developed by the respondent namely 'Park Elite Floors' Parklands situated at Faridabad vide allotment letter dated 24.12.2009. Builder buyer agreement was also executed between the original allottee and respondent for the said unit on 04.10.2010. Complainants purchased allotment rights of unit from the original allottee and got unit endorsed in their favor on 16.07.2013. An offer of possession was issued to complainants on 16.03.2017. in lieu of same, payments were made to respondent and NOC for fit out was issued to complainant on 14.09.2018. But actual physical possession of unit was finally handed over on 23.01.2020. It is the contention of the complainants that the respondent has failed to complete the project and thus delayed delivery of



possession of the booked unit beyond the time period stipulated in the agreement. Hence, the present complaint seeking delay interest alongwith execution of conveyance deed and refund of club membership charges is filed.

47. As per clause 4.1 of the agreement possession of the unit should have been delivered within a period of (24) months from the date of buyer agreement or on completion of payment of 35% of BSP along with 20% EDC and IDC by the purchaser whichever is later. Since, date of completion of payment of 35% of BSP along with 20% EDC and IDC by the complainants has not been disclosed by the respondent, so taking 24 months from date of agreement, the deemed date of possession comes to 04.10.2012. The agreement further entitles the respondent to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate for the unit. In this regard, it is observed that respondent has not placed on record any document to show that an application had been filed with the competent authority for grant of occupation certificate from 04.10.2012 till 04.04.2013 i.e the grace period. The delay is entirely on the part of the respondent. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter. Thus the deemed date of possession works out to 04.10.2012.

48. It is the stand of the respondent that the delivery of possession of the unit in question has been delayed beyond the stipulated period of time due to



circumstances beyond control. Respondent has attributed this delay to circumstances beyond its control such as NGT order dated 19.07.2016 preventing stone crushers to work without permission of State Pollution Control Board. As per submissions, said order affected construction activities for 30 days. Perusal of record reveals that respondent has failed to attach a copy of the order of the National Green Tribunal banning the operation of stone crushers. It is noteworthy that in the captioned complaint possession of the unit should have been delivered by 04.10.2012 which is much prior to the proposed ban. Moreover, no documentary evidence has been attached by respondent in support of its plea of force majeure. Hence, the plea is rejected being devoid of merit.

49. As per observations recorded in the preceding paragraph possession of the unit should have been delivered to the complainants by 04.10.2012. However, respondent failed to complete construction of the project and deliver possession within stipulated time. An offer of possession was issued to the complainants on 16.03.2017 alongwith demand of ₹5,03,310.23/- (inclusive of stamp duty charges of ₹ 2,08,000/-). Information w.r.t receipt of occupation certificate has not been detailed out by the respondent in its reply (copy of occupation certificate dated 07.09.2018 filed in registry on 02.09.2026). However, the complainants accepted the offer and made payment of ₹ 3,36,630/- on 03.05.2017.

50. After offer of possession, NOC for fit-out was issued to complainants on 14.09.2018. It is the stand of complainants that respondent failed to deliver



actual possession as per NOC and had rather delivered possession on 23.01.2020. Email communications (2018-2020) in this regard has been relied upon. Relevant content of emails are reproduced below for reference:-

I.Email dated 08.10.2018 by complainant

Subject: UNIT NO.146673 E32-10-FF, Park Elite Floors,

Dear Sir,

Please note that we have fulfill all the requirement & formalities for the possession of our above flat. Now we have been informed that the possession will be given after two months which is too late for us. In this connection, we are requesting you to kindly give us possession of our flat latest by 25th of October' 2018.

II.Email dated 03.07.2019 by complainant

Reference:- latter no. NOC/PARK ELITE FLOORS/FLOORS/146673 dated 14/09/2018

Dear sir/madam

With due respect I have received your above mention letter regarding taken the possession of above flat with No objection certificate. I had meet to Mr. Khushi Ram for taken the possession on date 22nd September 2018. He say flat is not ready so, come 22nd November 2018 (2 Month).I inform to you I went twice to your site office at Faridabad in last six months to take the possession, but I was informed that some maintenance work is pending. Day after tomorrow i.e. 01/07/2019 I again went to your main office at sector-76 Faridabad to meet Mr.

Khushi Ram regarding possession, but he was not there and even he was not picking my phone also. Then I contacted Mr. Vinod in this regard but he was also not responding properly.

Sir I have paid all your demand payments with interest on late payments also. Thereafter without taken possession I paid maintenance charges & electricity bills as per your kind control office. Sir I am suffered addition house rent and Interest on Housing loan against said flat.

So, I am requesting you to please look this matter seriously and give me the possession as well as earlier.

III. Email dated 13.07.2019 by respondent

Subject: RE-BPTP-48-Park Elite Floors, Parklands, Unit no. E32-10-FF

Dear Valued Customer,

We regret that we have been so far unable to provide you the handover date of your BPTP unit. The delay has been due to unexpected reasons and we are striving to be able to handover the unit to you at the earliest.

We are coordinating with the site team for the finishing works completion of your unit and once it is ready in all aspects we will send an email confirmation. We will revert to you with the date when to visit us for taking unit handover.

Also we wish to update you that the applicable CAM (maintenance charges) adjustments shall be done post we handover your BPTP home to you. Please note that any delay on customer's end in reaching site to take unit handover



shall not be considered while providing benefit of CAM adjustment to the customer.

Post making this adjustment, we shall send an email confirmation to you so that you may settle your accounts as per the requirement.

IV. Email dated 09.08.2019 by respondent

This is in context to our previous updates sent to you for the handover of your unit E32-10-FF.

We feel dissatisfied due to the delay in handing over your unit to you; the delay has been due to some unanticipated reasons which persisted longer than what they were expected to; we are striving to get the pending work completed on a high priority basis in any such unit where in there is a delay in unit handover.

We will be ready to handover the unit around 30-Sep-2019; We are very close to the final stage and would request you to continue your long and fruitful association with us.

We thank you for your understanding; assure you that your relationship is extremely valuable to us and that the organization is committed to meet customer expectation.

Assure you of complete support from our end to help you shift into your BPTP home.

It is important for us to advise you to write into us only at customercarebpms@bptp.com for any kind of support on maintenance related matters including maintenance bills, payments, feedback and complaints



related to site; each time you write into us please remember to mention your Project Name, House Number and Customer Code (six digits number) in the subject line of your email.

V.Email dated 21.01.2020 by respondent

Dear Valued Customer,

This update is for your BPTP home. We would like to inform you that your unit is now ready for handover. You are requested to visit our site to collect keys of your BPTP home and complete the required documentation. You are requested to be in touch with the Project In-charge Mr. Khushi Ram at +91-8800416060.

Kindly schedule your site visit date and timings with the Project In-charge to help site team plan other customer sits on that day and readiness of your house.

When you visit site to take unit handover, please remember to carry the following documents failing which the site team will not be able to provide the unit keys to you:

- 1. Copy of NOC Fit-outs / NOC Physical Possession / Sale deed / Conveyance Deed (whichever document is available with you)*
- 2. Original and 2 Xerox copies of your valid ID proof.*
- 3. Authorization letter from the owner (as per the case)*

51. Perusal of aforesaid emails clearly establish the fact that respondent was able to deliver actual possession of unit in year 2020 only that is approximately



2 years later to issuance of NOC for fit out in year 2018. Complainants have claimed date of handing over as 23.01.2020. Respondent has not provided any date for actual handing over of possession. Further, parties have failed to attach any document pertaining to handing over of unit. Since, respondent has not disputed/objected the date-23.01.2020 and same can be relied upon in terms of email dated 21.01.2020. It can be safely concluded that respondent had delayed the delivery of possession of unit from deemed date of possession, i.e. 04.10.2012 to actual handing over of possession of unit i.e. 23.01.2020. In the case in hand, complainants are the subsequent buyers and are pressing for delay interest from date of endorsement, i.e. 16.07.2013.

52. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked floor, the complainants are also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay. Therefore, the Authority hereby concludes that the complainants are entitled to receive delay interest for the delay caused in delivery of possession from 16.07.2013 to 23.01.2020.

53. As per Section 18 of the RE(R&D) Act, 2016 interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(z a) of the Act which is as under:

(z a) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

54. Rule 15 of IIRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%;

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”

55. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR) + 2% which as on date works out to 10.80% (8.80% + 2.00%).

56. Authority has got calculated the interest on total paid amount as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	date of endorsement or date of payment whichever is later	Interest Accrued till date of handing over i.e. 23.01.2020 (in ₹)
1.	17,98,120	16.07.2013	1267867
2.	2,00,193	03.08.2015	96850
3.	3,15,730	03.05.2017	93048
4.	1,73,000	22.11.2019	3225
5.	11,000	29.11.2019	182
Total:	24,98,043/-		14,61,172/-

For the purpose of calculation of interest, the amount paid by the complainants upto 23.01.2020 has been taken into consideration. Amount paid for club membership charges (CMC) has been deducted from total paid amount. Reference is made to para 59 of this order.

57. With regard to the relief clause (i), respondent has filed the copy of Occupation Certificate dated 07.09.2018 in registry on 02.09.2026 with an advance copy supplied to complainants.

58. With regard to the relief clause (ii), it is observed that conveyance deed of the unit has not been done in favor of complainant despite handing over of possession in year 2020. Respondent is obligated under section 17 of R&D (R&D) Act, 2016 to get the conveyance deed executed in favor of complainants after payment of necessary dues/stamp duty charges, if any, applicable in terms of agreement within 90 days of uploading of this order.

59. With regard to the relief clause (iv), seeking refund of club membership charges, Authority observes that club membership charges can only be levied when the club facility is fully operational with all amenities. In this case, no documentary evidence has been filed on record to establish the fact that facility of club is operational at site. Complainants have stated that the proposed club has not been constructed till date. Respondent has not placed any evidence to negate the claim of the complainants. *Since the club has not been constructed, the demand raised by the respondent on account of club charges for a non-existent club is also set aside. Same remains recoverable in future, if the facility of club becomes operational at site. Respondent is directed to refund the amount of club membership charges (as per receipts attached) along with interest as mentioned in the table below:-*



Sr. No.	Amount paid for CMC (in ₹)	Date of payment	Interest Accrued till date of order i.e. 03.09.2026 (in ₹)
1.	15,000	19.02.2013	21948
2.	15,525	03.08.2015	18604
3.	20,900	03.05.2017	21094
Total:	51,425/-		61646

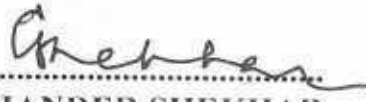
I. DIRECTIONS OF THE AUTHORITY

60. The Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to pay delay interest of ₹ 14,61,172/- to the complainants towards delay already caused in handing over the possession within 90 days from the date of uploading of this order.
- ii. Respondent is directed to refund the amount of ₹ 51,425/- received towards club membership charges with interest of ₹ 61,646/- within 90 days from the date of uploading of this order.
- iii. Respondent is directed to execute the conveyance deed in favor of complainant within 90 days from the date of uploading of this order.



- iv. Complainants will remain liable to pay balance consideration amount, if any, to the respondent at the time of execution of conveyance deed.
 - v. The respondent shall not charge anything from the complainants which is not part of the agreement to sell
61. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]


NADIM AKHTAR
[MEMBER]


PARNEET S. SACHDEV
[CHAIRMAN]