

**BEFORE THE HARYANA REAL ESTATE REGULATORY
 AUTHORITY, GURUGRAM**

Order pronounced on: 10.05.2022

NAME OF THE BUILDER		M/s BPTP Limited
PROJECT NAME:	SPACIO	APPEARANCE
1	CR/1027/2021 Amrender Kumar Vs. M/s BPTP and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
2	CR/1065/2021 Jayant Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
3	CR/928/2021 Pawan Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
4	CR/1289/2021 Ms. Banita Padmakar Tambare Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
5	CR/1177/2021 Sandeep Verma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
6	CR/1192/2021 Dheeraj Khajuria Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
7	CR/1285/2021 Ashish Mehta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
8	CR/1217/2021 Mokesh Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
9	CR/1209/2021 Hemant K. Talekar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao

10	CR/1245/2021	Puneet Manjal Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
11	CR/1228/2021	Vineet Umesh Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
12	CR/1226/2021	Sunita Garg Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
13	CR/1238/2021	Amitab Khare and Mrs. Seema khare Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
14	CR/1237/2021	Rajesh Rana Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
15	CR/1227/2021	Vikrant Mishra and Mrs. Arti Mishra Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
16	CR/1407/2021	Subhamvada Singh Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
17	CR/1218/2021	Lokesh Malik and Mrs. Anjali Malik Vs M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
18	CR/1214/2021	Himanshu Malik and Priti Malik Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
19	CR/1229/2021	Amit Bhardwaj Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao



20	CR/1900/2021	Prem Singh Parihar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
21	CR/2374/2021	Rinchen Palmokh and Dorje Namgail Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
22	CR/2668/2021	Mrs. Savita Singh Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
23	CR/2739/2021	Smarth Diwedi and Anita Devadi Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
24	CR/2375/2021	Rajesh Malhotra Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
25	CR/80/2021	Ritu Grover Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
26	CR/1617/2021	Anjali Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
27	CR/1615/2021	Nalini Kant Thakur and Annu Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
28	CR/1725/2021	Kulbhushan Gupta Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao
29	CR/2027/2021	Parveen Jaiswal vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Ms. Priyanka Agarwal Sh. Venket Rao

30	CR/1642/2021	Ajay Kumar Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
31	CR/2061/2021	Sushila Mailk and Salil Anand Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
32	CR/2063/2021	Sushila Mailk and Salil Anand Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
33	CR/3660/2021	Varun Sharma and Neha Garg Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
34	CR/3732/2021	Gurjit Kaur Anand Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Sukhbir Yadav Sh. Venket Rao
35	CR/3104/2021	Balraj Vadehra Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Amit Jaglan Sh. Venket Rao
36	CR/3212/2021	Kusum Singh and Rajender Singh Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Brajesh Choudhary Sh. Venket Rao
37	CR/1133/2021	Cap. Ajay Sharma Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd.	Sh. Yashvir Singh Sh. Venket Rao

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

Chairman
Member

ORDER

1. This order shall dispose of all the 37 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Spacio' being developed by the same respondents promoters i.e., M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges. In several complaints, the complainants have refuted various charges like increase in super area, cost escalation, STP charges, taxes viz GST and VAT etc., advance maintenance charges, holding charges and PLC etc.
3. The details of the complaints, reply status, unit no., date of agreement, date of environment clearance, date of sanction of building plans, due date of possession, offer of possession and relief sought are given in the table below:

Project: SPACIO, Sector-37-D, Gurugram

Possession Clause(3.1):the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.

Note:- The grace period is not included while computing the due date of possession.

1	2	3	4	5	6	7	8	9
Sr. No	Complaint No. Title Date of filing	Reply status	Unit No.	Date of booking	Date of agreement	Due date of possession	Offer of possession	Relief Sought
1	1027/2020 Amrender Kumar Vs. M/s BPTP Limited and another 02.03.2021	Reply Received	P- 1006, 10 th floor, Tower-P (Page no. 33 of complaint)	13.08.2010 (Vide receipt on page no. 22 of complaint)	29.03.2011 (page no. 112 of reply) SA-05.09.2011 23	13.08.2013 (36 months from date of booking)	29.01.2021 (Vide possession letter on page no. 204 of reply) TC- Rs. 44,70,961 AP- Rs. 31,69,466	i. DPC ii. Quash the escalation cost of Rs. 6,34,452/- iii. Quash the one-year advance maintenance charge of amount of Rs. 45,835.92/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.
2	1065/2021 Jayant Sharma Vs. M/s BPTP Limited and another 02.03.2021	Reply Received	P- 1701, 17 th floor, Tower-P (Page no. 36 of complaint)	25.08.2010 (vide receipt on page no. 22 of complaint)	16.03.2011 (Page no.31 of complaint) SA-01.09.2011 1	25.08.2013 (36 months from the date of booking)	29.01.2021 (Annexure R-19 on page no. 182 of reply) TC- 46,96,306 AP- 33,81,656	i. DPC ii. Quash the escalation cost of Rs. 6,34,452/- iii. Quash the one-year advance maintenance charge of amount of Rs. 45,835.92/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.



3	928/2021 Pawan Kumar Vs M/s BFTP Limited and another 02.03.2021	Reply Received	M-603, 6 th Floor, Tower-M (Page no. 30 of complaint)	09.07.2021 (Vide payment receipt on page no. 22 of complaint)	04.02.2021 (Page no. 29 of complaint)	09.07.2021 (36 months from the date of booking)	29.01.2021 (Vide letter of possession on page no. 140 of reply) TC- Rs. 45,01,955 AP- Rs. 32,75,292	i. DPC ii. Quash the escalation cost of Rs. 6,34,452/- iii. Quash the one-year advance maintenance charge of amount of Rs. 45,835.92/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.
4	1289/2021 Mrs. Vanita Padmakar Tambare and Mr. Padmakar kamalakar Tambare Vs. M/s BFTP Limited and another 02.03.2021	Reply Received	P-1203, Tower-F (Page no. 35 of complaint)	30.07.2021 (Vide payment receipt on page no. 22 of complaint)	19.12.2021 (Page no. 27 of complaint)	30.07.2021 (60 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 210 of reply) TC- Rs. 56,07,466 AP- Rs. 40,77,721	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount. iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.
5	1177/2021 Sandeep Verma Vs. M/s BFTP Limited and another 05.03.2021	Reply Received	M-602, 6 th Floor, Tower-M (Page no. 32 of complaint and also alleged by complainant at page no. 8 of complaint)	15.11.2021 (vide payment receipt on page no. 52 of reply)	25.03.2021 (on page no. 31 of complaint)	15.11.2021 (36 months from the date of booking)	20.02.2021 (page no. 150 of reply) TC- Rs. 81,64,237 AP- Rs. 61,03,800	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge of amount. iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

6	1192/2021 Dheeraj Khajuria Vs. M/s BPTP Limited and another 05.03.2021	Reply Received	M-2001 Floor 20th Tower-M (Page no. 32 of complaint)	30.07.2010 (vide receipt on page no. 21 of complaint)	10.02.2011 (Page no. 25 of complaint)	30.07.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 144 of reply) TC- Rs. 54,43,882 AP- Rs. 39,50,411	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
7	1285/2021 Ashish Mehta Vs. M/S BPTP Limited and another 09.03.2021	Reply Received	Q-1506, 15 th Floor Tower-Q (Page No. 34 of complaint)	29.07.2010 (Receipt Vide Dated on Page no. 22 of complaint)	04.04.2011 (pg no.26 of complaint)	29.07.2013 (36 months from the date of execution)	29.01.2021 (on page no. 135 of reply) TC- Rs. 44,54,870 AP- Rs. 31,60,865	i. DPC ii. Quash the escalation cost of Rs. 634452/- iii. Quash the one-year advance maintenance charge of amount of Rs. 45,835.92/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
8	1217/2021 Moksh Sharma Vs. M/s BPTP Limited and another 17.03.2021	Reply Received	Q-103, Tower-Q (Page no. 34 of complaint)	07.08.2010 (vide receipt on page no. 21 of complaint)	26.04.2011 (Page no. 28 of complaint)	07.08.2015 (60 months from the date of booking)	29.01.2021 (vide offer of possession letter on page no. 171 of reply) TC- Rs. 57,04,004 AP- Rs. 41,52,743/-	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder



9	1209/2020 Hemant K. Talekar and Mrs. Anuja Hemant Talekar Vs M/s BPTP Limited and another 18.03.2021	Reply Received	P-504, 5 th Floor Tower-P (Page no. 32 of complaint)	26.07.2010 (vide receipt on page no. 42 of reply)	01.04.2011 (on page no.31 of complaint)	26.07.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 126 reply) TC- Rs. 55,25,468 AP- Rs. 4000179/-	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
10	1245/2021 Puneet Maojal Vs. M/s BPTP Limited and another 18.03.2021	Reply Received	M-804, 8 th floor, Tower-M (Page No. 33 of Complaint)	21.07.2010 (vide payment of receipt on page no. 22 of complaint)	30.03.2011 (Page no. 25 of complaint)	21.07.2013 (36 months from the date of booking)	29.01.2021 (Vide offer of possession on page No. 169 of reply) TC- Rs. 45,34,885 AP- Rs. 33,05,850/-	i. DPC ii. Quash the escalation cost of Rs. 634452/- iii. Quash the one-year advance maintenance charge of amount of Rs. 45835.92/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
11	1228/2021 Vineet Umesh Gupta Vs M/s BPTP Limited and another 18.03.2021	Reply Received	Q-505, 5 th floor, tower-Q (Page no. 41 of complaint)	06.12.2010 (vide receipt on page no. 22 of complaint)	07.09.2011 (on page no. 33 of complaint)	06.12.2013 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 175 of complaint) TC- Rs. 79,46,346/- AP- Rs. 58,53,593/-	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge of amount Rs. 79,225. iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

12	1226/2021 Sunita Garg Vs M/s BPTP Limited and another 19.03.2021	Reply received	M-1101, 11 th floor, Tower-M (Page no. 33 of complaint)	15.10.2021 [vide receipt on page no. 21 of complaint]	14.04.2021 1 (Page no. 28 of complaint)	15.10.2021 3 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 149 of reply) TC- Rs. 56,65,809 AP- Rs. 41,30,985/-	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
13	1238/2021 Amitab Khare and Mrs. Seema Khare Vs. M/s BPTP Limited and another 19.03.2021	Reply Received	M-705, 7 th floor, Tower-M (Page No. 40 of complaint)	22.02.2021 [vide receipt on page no. 21 of complaint]	18.05.2021 1 (Page no. 35 of complaint)	22.02.2021 4 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 142 of reply) TC- Rs. 70,11,909 AP- Rs. 50,38,954/-	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge of amount Rs. 79,225. iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
14	1237/2021 Rajesh Rana Vs. M/s BPTP Limited and another 19.03.2021	Reply received	M-503, 5 th floor, Tower-M (Page no. 28 of complaint)	03.08.2021 [page no. 21 of complaint]	24.03.2021 1 (Page no. 23 of complaint)	03.08.2021 3 (36 months from the date of booking)	29.01.2021 (Vide possession letter on page no. 144 of reply) TC- Rs. 46,74,434 AP- Rs. 33,31,810/-	i. DPC ii. Quash the escalation cost of Rs. 6,34,452/- iii. Quash the one-year advance maintenance charge of amount of Rs. 45,835.92/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.

15	1227/2021 Vikrant Mishra and Mrs. Arti Mishra Vs. M/s BPTP Limited and another 19.03.2021	Reply received	M-1006, 10 th floor, Tower-M (Page no. 39 of complaint)	07.09.2010 (page no. 23 of complaint)	17.03.2011 (on page no. 31 of complaint)	07.09.2013 (36 months from the date of booking)	29.01.2021 (Vide possession letter on page no. 133 of reply) TC- Rs. 55,21,851 AP- Rs. 39,97,762/-	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.
16	1407/2021 Subhamvada Singh Vs. M/s BPTP Limited and another 24.03.2021	Reply received	M-802, Tower-M (Page no. 51 of the complaint)	30.12.2010 (vide receipt on page no. 75 of the reply)	08.11.2016 (Page no. 45 of the complaint) SA 06.03.2015	30.12.2015 (60 months from the date of booking)	27.01.2021 (vide possession letter on page no. 198 of reply) TC- Rs. 60,13,100/- AP- Rs. 49,41,193/-	i. DPC ii. Direct the respondent to provide area calculator iii. Restrain the respondent from charging cost escalation iv. Restrain the respondent from asking indemnity/undertaking for possession of flat. v. Quash maintenance charge vi. Quash administrative charges vii. Direct the respondent to credit the GST input credit in her account
17	1218/2020 Lokesh Malik and Mrs. Anjali Malik Vs. M/s BPTP Limited and another 26.03.2021	Reply received	Q-2005, 20 th floor, Tower-Q (Page no. 31 of complaint)	31.01.2011 (vide receipt on page no. 59 of reply)	18.05.2011 (Page no. 26 of complaint)	31.01.2014 (36 months from the date of booking)	29.01.2021 (vide possession letter on page no. 161 of reply) TC- Rs. 79,15,309 AP- Rs. 58,17,7439/-	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge of amount Rs. 79,225. iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security amount Rs. 93250/- vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

18	1214/2021 Himanshu Malik and Priti Malik Vs. M/s. BPTP Limited and another 26.03.2021	Reply received	Q-2002, 20 th floor, Tower-Q (Page no. 33 of complaint)	13.01.2011 (vide receipt on page no. 22 of complaint)	18.05.2011 (Page no. 27 of complaint)	13.01.2013 (calculated from the date of booking)	29.01.2021 (vide letter of possession on page no. 160 of reply) TC- Rs. 80,26,397- AP- Rs. 58,91,462/-	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge of amount Rs. 79,225, iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security amount Rs. 93,250/- vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
19	1229/2021 Amit Bhardwaj Vs. M/s. BPTP Limited and another 26.03.2021	Reply received	N-1401 Floor 14th Tower-N (Page no. 31 of complaint)	14.08.2010 (vide receipt on page no. 51 of reply)	05.05.2011 (Page no. 24 of complaint)	14.08.2013 (36 months from the date of booking)	29.01.2021 (Page no. 160 of reply) TC- Rs. 53,67,369 AP- Rs. 36,29,278/-	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
20	1900/2021 Prem Singh Parihar Vs. M/s BPTP Limited and another 15.04.2021	Reply received	K-1704, Tower-K (Page no. 34 of complaint)	15.07.2010 (as alleged by the complainant in complaint)	15.11.2019 (Page no. 29 of complaint) SA-15.05.2020	15.07.2015 (60 months from the date of booking)	05.08.2020 (vide offer of possession on page no. 180 of reply) TC- Rs. 45,43,666 AP- Rs. 34,49,872/-	i. DPC ii. Quash the escalation cost of Rs. 6,34,452/- iii. Quash the one-year advance maintenance charge of amount iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder.

21	2374/2021 Rinchen Palmo and Mr. Dorjey Namgal Vs. M/s BPTP Limited and another 09.06.2021	Reply received	L-1904 Floor 19th Tower-I, (Page no. 34 of complaint)	24.01.2012 (on page no. 22 of complaint)	06.02.2013 (Page no. 25 of complaint) SA-23.05.2013	06.02.2016 (36 months from the date of execution of FBA)	10.03.2021 (vide offer of possession letter on page no. 189 of reply) TC- Rs. 77,33,581 AP - Rs. 59,54,184	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
22	2668/2021 Mrs. Savita Slagh Vs. M/s BPTP Limited and another 07.07.2021	Reply Received	P-101, 1 st floor, Tower-P (page no. 47 of complaint)	10.08.2010 [vide payment of receipt on page no. 28 of complaint]	29.03.2011 [p.no. 44 of complaint]	10.08.2013 (36 months from the date of booking)	27.01.2021 [page no. 250 of reply] TC- Rs. 48,02,500 AP- Rs. 29,46,908	i. DPC ii. Quash the escalation cost of Rs. 6,34,452/- iii. Quash the one-year advance maintenance charge of amount iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
23	2739/2021 Smarth Dwivedi and Anita Dwivedi Vs. M/s BPTP Limited and another 13.07.2021	Reply Received	P-1105, 11 th floor, Tower-P (page no. 30 of complaint)	10.01.2011 (vide payment of receipt on page no. 22 of complaint)	13.08.2011 (page no. 29 of complaint) SA-07.10.2011	10.01.2014 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 138 of reply) TC- Rs. 81,21,607 AP- Rs. 60,43,607	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder

24	2375/2021 Rajesh Malhotra Vs. M/s BPTP Limited and another 09.06.2021	Reply received	P-405, 4 th floor, Tower- P (Page no. 44 of complaint)	10.01.2011 (vide payment receipt on page no. 19 of complaint)	18.05.2011 (Page no. 37 of complaint)	10.01.2013 (36 months from the date of booking)	29.01.2021 (vide letter of possession on page no. 157 of reply) TC- Rs. 82,79,879 AP- Rs. 61,93,349	i. DPC ii. Quash the escalation cost of Rs. 1096620/- iii. Quash the one-year advance maintenance charge iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
25	80/2021 Ritu Grover Vs. M/s BPTP Limited and another 13.01.2021	Reply Received	K-595, 5 th floor, Tower-K (Page no. 37 of complaint)	09.08.2010 (as alleged by the complainant in complaint on page no. 6)	17.03.2011 (Page no. 33 of complaint)	09.08.2013 (36 months from the date of booking)	05.08.2020 (vide offer of possession on page no. 186 of reply) TC- Rs. 72,58,705 AP- Rs. 51,78,771	i. DPC ii. Direct the respondent to furnish proof with respect to increase in super area iii. Direct the respondent to furnish proof with respect to increase in cost of construction. iv. To direct the respondent to quash the VAT charges v. Direct the respondent to bear the GST charges in lieu of judgement passed by Panchkula authority in "Madhu Sareen vs. BPTP Ltd." vi. Direct the respondent to charge service tax on the complainant till 11.05.2014 i.e. the date of completion of unit of the complainant and thereafter, the service tax for the remaining period i.e. upto 30.06.2017 shall be borne by the respondent Direct the respondent to exclude development charge, car parking charge, VAT, park corner charges, club membership charges from the final demand since the same has already been paid by the complainant. vii. Restrain the respondent from charging electrification charges viii. Direct the respondent to issue offer of possession. ix. Direct the respondent not to impose any penalty on complainant for not making the final payment. x. Direct the respondent to comply the terms and



								conditions of the clause 12.5 of the FBA. xi. Pass an order for payment of penalty for delay as pe clause 3.3 of FBA at the rate of Rs.5/- per sq. ft.
26	1617/2021 Anjali Vs. M/s BPTP Limited and another 31.03.2021	Reply receiv ed	M- 1404, 4 th floor, Towe r-M (Page no. 32 of compl aint)	12.11.2 010 (vide allotme nt cum demand letter on page no. 101 of reply)	21.03.201 1 (Page no. 27 of complaint) SA- 01.01.201 9	12.11.201 3 36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 242 of reply) TC- Rs. 49,70,131 AP- Rs. 36,26,125	i. DPC ii. Direct the respondent to furnish proof with respect to increase in super area iii. Direct the respondent to furnish proof with respect to increase in cost of construction. iv. To direct the respondent to quash the VAT charges v. Direct the respondent to bear the GST charges in lieu of judgement passed by Fanchkula authority in "Madhu Sareen vs. BPTP Ltd." vi. Direct the respondent to charge service tax on the complainant till 07.03.2014 i.e. the date of completion of unit of the complainant and thereafter, the service tax for the remaining period i.e. upto 30.06.2017 shall be borne by the respondent Direct the respondent to exclude development charge, car parking charge, VAT, park corner charges, club membership charges from the final demand since the same has already been paid by the complainant. vii. Restrain the respondent from charging electrification charges viii. Direct the respondent to issue offer of possession. ix. Direct the respondent not to impose any penalty on complainant for not making the final payment. x. Pass an order for payment of penalty for delay as pe clause 3.3 of FBA at the rate of Rs.5/- per sq. ft.

27	1615/2021 Nalini kant thakur and annu Vs. M/s BPTP Limited and another 31.03.2021	Reply received	P-2004, 20 th floor, Tower P (Page no. 35 of complaint)	11.04.2011 (vide allotment cum demand letter on page no. 28 of complaint)	18.05.2011 1 (Page no. 31 of complaint)	31.04.2011 4 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 139 of reply) TC- Rs. 59,81,207 AP- Rs. 39,25,287	<p>i. DPC</p> <p>ii. Direct the respondent to furnish proof with respect to increase in super area</p> <p>iii. Direct the respondent to furnish proof with respect to increase in cost of construction.</p> <p>iv. To direct the respondent to quash the VAT charges</p> <p>v. Direct the respondent to bear the GST charges in lieu of judgement passed by Panchkula authority in "Madhu Sareen vs. BPTP Ltd."</p> <p>vi. Direct the respondent to charge service tax on the complainant till 10.10.2014 i.e. the date of completion of unit of the complainant and thereafter, the service tax for the remaining period i.e. upto 30.06.2017 shall be borne by the respondent</p> <p>Direct the respondent to exclude development charge, car parking charge, VAT, park corner charges, club membership charges from the final demand since the same has already been paid by the complainant.</p> <p>vii. Restrain the respondent from charging electrification charges</p> <p>viii. Direct the respondent to issue offer of possession.</p> <p>ix. Direct the respondent not to impose any penalty on complainant for not making the final payment.</p> <p>x. Direct the respondent to comply the terms and conditions of the clause 12.5 of the FBA.</p> <p>xi. Pass an order for payment of penalty for delay as per clause 3.3 of FBA at the rate of Rs.5/- per sq. ft.</p> <p>xii. Direct the respondent to withdraw its termination letter</p>
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28	1725/2021 Kalbhushan Gupta Vs. M/s BPTP Limited and another 05.04.2021	Reply Received	M-2006, 20 th floor, Tower-M (page no. 33 of complaint)	01.09.2011 (vide payment receipt on page no. 21 of complaint)	03.11.2011 (on page no. 26 of complaint)	01.09.2014 (36 months from the date of booking)	29.01.2021 (on page no. 173 of reply) TC- Rs. 65,60,078 AP- Rs. 49,19,321	i. DPC ii. Quash the escalation cost of Rs. 766164/- iii. Quash the one-year advance maintenance charge of amount of Rs. 55351.44/- iv. Quash the increased super area v. Quash the VAT charges and will pay by own vi. To direct the respondent to pay interest on maintenance security vii. To pass an order for payment of GST amount levied upon by the complainants and taken the benefits of input credit by the builder
29	2027/2021 Parveen Jaiswal Vs. M/s BPTP Limited and another 16.04.2021	Reply received	M-1602, 16 th floor, Tower-M (Page no. 40 of complaint)	07.06.2011 (vide receipt on page no. 85 of complaint)	17.06.2011 (Page no. 36 of complaint)	07.06.2014 (36 months from the date of booking)	17.02.2021 (vide offer of possession on page no. 158 of reply) TC- Rs. 92,74,683 AP- Rs. 67,47,004	i. DPC ii. Direct the respondent to furnish proof with respect to increase in super area iii. Direct the respondent to furnish proof with respect to increase in cost of construction. iv. To direct the respondent to quash the VAT charges v. Direct the respondent to bear the GST charges in lieu of judgement passed by Panchkula authority in "Madhu Sareen vs. BPTP Ltd." vi. Direct the respondent to charge service tax on the complainant till 04.12.2014 i.e. the date of completion of unit of the complainant and thereafter, the service tax for the remaining period i.e. upto 30.06.2017 shall be borne by the respondent Direct the respondent to exclude development charge, car parking charge, VAT, park corner charges, club membership charges from the final demand since the same has already been paid by the complainant. vii. Restrain the respondent from charging electrification charges viii. Direct the respondent to issue offer of possession. ix. Pass an order for payment of penalty for delay as per the allotment agreement @Rs.5/- per sq. ft. x. Pass an order direct the respondent to provide discount of Rs. 200/- per sq. ft. in the

								basic sale price as per application form.
30	1642/2021 Ajay Kumar Vs. M/s BPTP Limited and another 02.04.2021	Reply received	Q-1806, 18 th floor, Q tower (Page no. 85 of complaint)	23.08.2020 (vide receipt on page no. 34 of complaint)	29.01.2021 8 (Page no. 80 of complaint) SA-01.05.2021 7	23.08.2021 5 (60 months from the date of booking)	27.01.2021 (vide offer of possession page no. 187 of reply) TC- Rs. 46,44,516 AP- Rs. 33,30,114	i. DPC ii. Direct the respondent party to provide area calculation. iii. To direct the respondent to quash the escalation cost iv. To direct the respondent to give input credit to the GST v. Restrain the respondent from asking indemnity/undertaking for possession of the flat. vi. Quash administrative charges.
31	2061/2021 Sushila Malik and Shalli Anand Vs. M/s BPTP Limited and another 19.04.2021	Reply Received	P-804, 8 th floor, P-Tower (Page no. 56 of complaint)	12.11.2020 (vide allotment cum demand letter on page no. 50 of complaint)	04.04.2021 4 (Page no. 53 of complaint)	12.11.2021 3 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 185 of complaint) TC- Rs. 56,23,281 AP- Rs. 40,87,157	i. DPC ii. Direct the respondent to provide super area calculation iii. Direct the respondent to issue a payment receipt of Rs. 10,13,495/- for the payment made by the complainants. iv. Direct the respondent to provide the copy of the completion certificate and BR-III of the unit. v. To direct the respondent to restrain from holding charges. vi. Restrain the respondent from asking indemnity/undertaking for possession of the flat vii. Refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the BBA.
32	2063/2021 Sushila Malik and Shalli Anand Vs. M/s BPTP Limited and another 19.04.2021	Reply received	K-805, 8 th floor, Tower-K (Page no. 58 of complaint)	10.08.2020 (Vide payment receipt page no. 47 of complaint)	16.03.2021 1 (Page no. 50 of complaint)	10.08.2021 3 (36 months from the date of booking)	04.08.2020 (vide offer of possession on page no. 174 of reply) TC- Rs. 77,38,965 AP- Rs. 56,67,056	i. DPC ii. Direct the respondent to provide area calculation iii. Quash cost escalation charges iv. Direct the respondent to refund Rs. 1,76,056/- as electrification and STP charges. v. Direct the respondent to provide copy of completion certificate and BR-III of the unit. vi. Direct the respondent to restrain from holding charges. vii. Restrain the respondent from asking indemnity/undertaking for possession of the flat.

								viii. Refrain the respondent from giving effect to unfair clauses incorporated in the BBA.
33	3660/2021 Varun Sharma & Neha Garg Vs. M/s BPTP Limited and another 13.09.2021	Reply received	L-101 Floor 1st Tower-I. (Page no. 33 of complaint)	05.08.2021 (vide receipt on page no. 35 of complaint)	25.03.2021 1 (Page no. 36 of complaint)	05.08.2021 3 (36 months from the date of booking)	13.08.2020 (vide offer of possession on page no. 148 of reply) TC- Rs. 45,95,191 AP- Rs. 32,80,252	i. DPC ii. Direct the respondent to provide area calculation iii. To direct the respondent to refund cost escalation iv. To direct the respondent to refund GST v. To direct the respondent to refund the amount paid under the head electrification and STP charges. vi. To direct the respondent from giving effect to unfair Clauses incorporated in the BBA
34	3732/2021 Gurjit Kaur Anand Vs. M/s BPTP Limited and another 04.10.2021	Reply received	N-106 1st Floor Tower-N (Page No. 32 of complaint)	10.09.2021 010 (vide payment receipt on page no. 33 of complaint)	21.03.2021 1 (Page no. 34 of complaint)	10.09.2021 3 (36 months from the date of booking)	27.01.2020 (vide offer of possession on page no. 197 of reply) TC- Rs. 50,57,547 AP- Rs. 36,33,382	i. DPC ii. Direct the respondent to provide area calculation iii. To direct the respondent to refund cost escalation iv. To direct the respondent to refund GST v. To direct the respondent to refund the amount paid under the head electrification and STP charges. vi. To direct the respondent from giving effect to unfair Clauses incorporated in the BBA
35	3104/2021 Balraj Vadehra Vs. M/s BPTP Limited and another 11.08.2021	Reply received	M-104 Floor 1st, Tower-M (Page no. 26 of complaint)	28.10.2021 016 (vide allotment cum demand letter on page no. 46 of reply)	27.12.2021 1 (Page no. 22 of complaint)	28.10.2021 3 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 115 of reply) TC- Rs. 46,72,502 AP- Rs. 34,34,658	i. DPC ii. Direct the respondent not to charge cost escalation cost

36	CR/3212/2021 Kusum Singh and Rajender Singh Vs. M/s BPTP Limited and another 25.08.2021	Reply Received	Q-802,8 ⁿ Floor, Tower-Q (page no. 32 of complaint)	21.12.2010 (vide payment receipt on page no. 20 of complaint)	07.04.2011 (page no. 25 of complaint) SA-11.08.2011	21.12.2013 (36 months from the date of booking)	20.02.2021 (vide offer of possession on page no. 139 of reply) TC- Rs. 80,08,189 AP- Rs. 59,32,122	i. DPC
37	CR/1133/2021 Ajay Sharma Vs. M/s BPTP Limited and another 14.04.2021	Reply Received	Q-G001, ground floor, Tower-Q. (page no. 48 of complaint)	25.01.2012 (page no. 52 of reply)	08.08.2016 (page no. 38 of complaint)	25.01.2015 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 156 of reply) TC- Rs. 63,90,559 AP- Rs. 48,86,451	i. DPC ii. Direct the respondent not to charge GST and Service Tax

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not handing over the possession by the due date. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast

upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

7. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particular's of lead case CR/1228/2021 at serial no. 11 titled as Mr. Vineet Umesh Gupta and Raksha Vineet Gupta Vs. M/s BPTP Limited and anr. are being taken into consideration for determining the rights of the allottees qua delay possession charges, increase in super area, cost escalation, STP charges, taxes viz GST and VAT etc, advance maintenance charges, holding charges and PLC.

A. Unit and project related details

8. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/1228/2021

S. No.	Heads	Description	
1.	Name of the project	"Spacio', Sector 37D, Gurugram, Haryana	
2.	Project area	43.588 acres	
3.	DTCP license no.	83 of 2008 issued on 05.04.2008	94 of 2011 issued on 24.10.2011
	Validity of license	04.04.2025	23.10.2019
	Name of the license holder of 83 of 2008	M/s Super Belts and 4 others	M/s Countrywide Promoters Pvt. Ltd. and 11 others
	Licensed area	23.814 acres	19.744 acres
4.	RERA registration number	300 of 2017 dated 13.10.2017	
	Validity of registration certificate	w.e.f. 13.10.2017 till 12.10.2020	

5.	Date of execution of flat buyer's agreement	07.09.2011 (on page no. 33 of complaint)
6.	Date of Booking by	06.12.2010 (page no. 22 of complaint)
8.	Unit no.	Q-505, 5 th floor, Tower-Q (page no. 37 of complaint)
9.	Unit area admeasuring	1800 sq. ft. (on page no. 37 of complaint)
10.	Revised unit area	1865 sq. ft. (a on page no. 175 of reply)
11.	Total consideration	Rs 79,46,346/- on page no. 177 of reply)
12.	Total amount paid by the complainant	58,53,593/- (page no. 177 of reply)
13.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement i.e. within a period of 36 months from the date of booking/registration of flat and the promoter has claimed grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the authority.	06.12.2013 Note: Grace period is not included
14.	Occupation certificate date	15.01.2021 (on page no. 172 of reply)
15.	Offer of possession	27.01.2021 (page no. 175 of reply)

B. Facts of the complaint

The complainants have submitted as under:

9. That the complainants had approached the respondents for booking of a flat admeasuring 1800 sq. ft. in project namely Spacio, Sector-37 D, Gurugram and paid booking amount of Rs.1,00,000/- through cheque no. 538838 dated 06.12.2010. Thereafter, the complainants were allotted the flat no. Q-505, 5th floor, Tower-Q, admeasuring 1800 sq. ft. in the said project.
10. That the respondents to dupe the buyers in nefarious net even executed buyer's agreement signed between them and M/s BPTP Limited on 07.09.2011, just to create a false belief that the project would be completed in time bound manner but in the garb of that agreement, persistently raised demands due to which they were able to extract huge amount of money from the complainants.
11. That the total cost of the said flat is Rs.5905025/- including basic sale price, EDC, IDC, club, IFMS, car parking, PLC, ECC, FFC, PBIC as per the flat buyer's agreement. According to the statement of account, the complainants have paid a sum of Rs.5853593/- (i.e., more than 95% of total sale consideration) in time bound manner to the respondents till date and paid amount as demanded by them without doing appropriate work on the said project, which is illegal and arbitrary.
12. That respondents were liable to hand over the possession of the said unit before 06.12.2013 as per clause no 3.1 of the flat buyer's agreement but builder offered the possession of flat on 27.01.2021 which is not in habitable condition and as there is absence of basic amenities, the respondents would take more time to give physical possession.
13. That the builder in last 10 years have made false promises for possession of flat. That as per section 19 (6) the Act, the complainants have fulfilled their responsibilities in regard to making the necessary

payments in the manner and within the time specified in the said agreement. Therefore, the complainants herein are not in breach of any of its terms of the agreement.

14. That complainants have paid all the instalments timely and deposited Rs. 5853593/-. However, the respondents in an endeavour to extract money from allottees devised a payment plan under which it linked more than 15 % amount of total paid against as an advance and rest of 80 % amount was linked with the construction of super structure only, which is not depended or co-related to the finishing of flat and internal development of facilities amenities and after taking the same, the respondents have not bothered to any development and last/rest 5% of the total sale consideration is linked with offer of possession.
15. That the executed flat buyer's agreement is one sided and at the time of offer of possession, the builder used new trick for extracting extra money from complainants and forcibly imposed escalation cost of Rs. 10,96,620/- and wrongly justified it. It is understandable that the complainants booked the flat in 2010, to be delivered by 2013 (as per agreement, it was to be delivered after 36 months from execution of flat buyer's agreement) and therefore, the inflation was calculated at the time of booking. If project was delayed by the respondents, complainants cannot be held responsible for the same. When we see inflation index of past 18 years during this period, the rate of inflation decreased. So, the builder is liable to give discount in basic sale price rather than forcibly imposing escalation cost with unjustified reasons. The basic sale price fixed at the time of booking and demand of escalation cost are totally illegal, arbitrary, unjustified and unacceptable.

16. That the respondents have charged compounded interest @ 18% on delayed installment as per clause 2.11 of flat buyer's agreement and offered delay penalty of Rs. 5/- per month per sq. ft. as per clause 3.3 of flat buyer's agreement, which are totally illegal and arbitrary.
17. That the respondents have indulged in all kinds of tricks and blatant illegality in booking and drafting of flat buyer's agreement with a malicious and fraudulent intention and caused deliberate and intentional mental and physical harassment to the complainants and the complainants are eminently justified in seeking possession of flat along with delayed penalty.
18. That the respondents at the time of offer of possession forcibly imposed escalation cost Rs.10,96,620/- and increased the super area of flat from 1800 sq. ft. to 1865 sq. ft. But the carpet area remains the same which has been objected by the complainants at the time of offer of possession. It is unjustified and illegal. That the respondents had raised illegal and unjustified demand towards VAT amounting to Rs. 46,529/-, an intimidate attempt to coerce and obtain an illegal and unfounded amount.
19. That the respondents demanded one year of advance maintenance charges payable as per the Haryana Apartment Ownership Act and the charges are to be paid monthly. Hence, asking for the maintenance charges in advance for 12 months, without having giving the possession and without the registration of the flat is absolutely illegal. A demand for security by way of IFMS was also raised along with offer of possession and the same being illegal and arbitrary.
20. That the snail pace of work at the construction site and half-hearted promises of the respondents, has consequently injured the interest of

the buyers including the complainants who have spent their entire hard-earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondents conducted the business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss. Hence, this complaint.

C. Relief sought by the complainants:

21. The complainants have sought following relief(s):

- i. Pass an order for delay interest on paid amount of Rs. 5853593/- from 06.12.2013 along with pendent lite and future interest till actual possession thereon @18%.
- ii. Direct the respondents to quash escalation cost of Rs.1096620/-.
- iii. Direct the respondents to quash the increased in super area as carpet area remain same as previous.
- iv. Direct the respondents to quash the VAT charges and will pay by own.
- v. Direct the respondents to quash the one-year advance maintenance charges Rs. 79225/-.
- vi. Direct the respondent to pay interest on maintenance security.
- vii. Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

22. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents

The respondents have contested the complaint on the following grounds:

23. That the respondents had applied for registration of the project in question i.e. "Spacio" located at sector-37D, Gurugram before this Hon'ble Authority and accordingly, registration certificate dated 13.10.2017 was issued by this Hon'ble Authority.
24. That the complainants have approached this hon'ble authority for redressal of alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. The complainants have concealed the following facts:
 - i. That the complainants have concealed from this Hon'ble Authority that offer of possession dated 27.01.2021 was made after receiving occupation certificate on 15.01.2021.
 - ii. That the complainants have concealed from this Hon'ble Authority that with the motive to encourage the complainants to make payment of the dues within the stipulated time, the respondents also gave additional incentive in the form of timely payment

discount to the complainant and in fact, till date, the complainants have availed timely payment discount of Rs.166,569.79/-.

- iii. That the complainants had concealed from this Hon'ble Authority that on the request of complainants the respondents by showing good gesture gave basic sale price (BSP) amounts to Rs.226,575/- (4.75% of the total BSP).
- iv. That the complainants have further concealed from this Hon'ble Authority that the respondents being a customer centric organization vide demand letters as well as numerous emails has kept updated and informed the complainants about the milestone achieved and progress in the developmental aspects of the project. The respondents vide emails has shared photographs of the project in question. However, it is evident to say that the respondents have always acted bonafidely towards its customers including the complainants, and thus, has always maintained a transparency in reference to the project. In addition to updating the complainants, the respondents on numerous occasions, on each and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance. However, notwithstanding the several efforts made by the respondents to attend to the queries of the complainants to their complete satisfaction, the complainants erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority against the respondents.

From the above, it is very well established, that the complainants have approached this authority with unclean hands by distorting/concealing/ misrepresenting the relevant facts pertaining to

the case at hand. It is further submitted that the sole intention of the complainants is to unjustly enrich themselves at the expenses of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

25. That the agreements that were executed prior to implementation of the Act and the rules shall be binding on the parties and cannot be reopened. This, both the parties being signatory to a duly document flat buyer agreement dated 07.09.2011 executed by the complainants out of their own free will and without any undue influence or coercion and the complainants are bound by the terms and conditions so agreed between them.
26. That upon completion of construction and upon getting/ securing occupancy certificate from competent authority on 15.01.2021, the respondents acted swiftly and issued the offer of possession letter cum final demand notice on 27.01.2021. The complainants were also sent a reminder notice to clear dues on 15.03.2021. As per the abovementioned possession letter cum final demand notice, the complainants were asked to clear their dues of Rs.25,08,752.11/- (amount includes stamp duty charges Rs.416,000/-) by 26.02.2021 against said offer of possession. To the surprise of the respondents, the complainants who were so eager to claim possession of the unit has chosen not to respond to reminders sent by respondents needless to say that they either cleared his dues or claimed possession of the unit but has instead approached the authority to get unjustified reliefs. The

delay in completion of project, if any, does not give any entitlement to the complainants to hold the due payments and seek possession of unit without making entire sale consideration. This is an arm-twisting tactic adopted by the complainants to get the possession of unit without making due payments.

27. That it is submitted that as per clause-2 of the agreement titled as “sale consideration and other conditions” specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC), preferential location charges (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (i.e. GST), electrification charges (EC), charges for installing sewerage treatment plant (STP), administrative charges, interest free maintenance security (IFMS), etc. shall also be payable by the complainants:

- i) That the charges qua VAT or any fresh incidence of tax were duly agreed by the complainants vide clause 4 of the application form, wherein the complainants had agreed to pay VAT and all other charges as may be communicated from time to time. Vide said clause the complainants further agreed to pay any tax/charges including any fresh incidence of tax as may be levied by the Government of Haryana/Competent Authority/Central Government, even if it is retrospective in effect as and when demanded by the respondents on the super area of the flat without any demur and protest. VAT being indirect tax has to be borne and paid by end user/allottee. The Government of Haryana vide

notification No.19/ST-1/H.A.6/2003/S.59A/2016 dated 12.09.2016 launched amnesty scheme for developers - Haryana Alternative Tax Compliance Scheme for Contractors, 2016 (hereinafter referred to as 'amnesty scheme'). The scheme provides for a tax rate of one percent (1%) and sub-charge of five percent (5%), effective of tax comes to 1.05% of the entire aggregate amount received/receivable (total sale consideration) during the year for the period prior to 31.03.2014. The VAT payable under the VAT amnesty scheme is in lieu of tax, interest, penalty, charged or chargeable, under the provisions of the Act. In accordance to the same, it is stated that for the said unit, the respondents have received an amount of Rs.44,31,313.23/- till 31.03.2014, therefore the respondents vide letter dated 10.11.2016 raised demand towards VAT for a sum of Rs.46,529/- i.e., 1.05% of the received amount which is completely within the purview of the amnesty scheme. It is pertinent to mention herein, that the complainants without any protest or hesitation have paid the same on 18.11.2016 and receipt for the same was also issued by the respondents. It is further submitted, that the said charges have been agreed by the complainants right from the very beginning and despite being agreed charges, the complainants, now at such belated stage, are raising contentions against the said charges with a view to gain at the expenses of the respondents. VAT being indirect tax always payable by the end user / allottee as per applicable laws.

- ii) It is submitted that GST being indirect tax is payable by the end user / allottee as per GST regulations. It is further submitted that vide clause 4 of the booking form, later reiterated vide clause 2.1 of the duly executed flat buyer's agreement, it was specifically agreed to between the parties that the complainants are liable to pay statutory dues including but not limited to service tax, VAT and other tax incidence that may arise. Thus, GST which has been levied by the Government from 01.07.2017 is applicable and payable by each customer. Even otherwise, indirect taxes such as GST, HVAT etc. are having pass through nature, which are collected by the respondents and further paid to the Government.
- iii) It is submitted that maintenance charges are being taken in advance to ensure the proper maintenance of the complex. It is further submitted that the parties had duly agreed regarding maintenance charges and IFMS at the stage of entering into the transaction and with respect to the relief sought by the complainants regarding super area is untenable as it has been duly agreed between the parties that the super area of the flat shall be determined after completion of the construction.
- iv) It is further submitted that the cost escalation charges if any, were to be ascertained and finalized at the time of offer of possession. Thus, the said charges were already agreed upon by the complainants at the stage of entering into the transaction. It is further important to point out at this juncture that the undertaking to pay the abovementioned charges was comprehensively set out in the flat buyer's agreement. If we take into consideration the figures for the year 2010-11 in the Annexure "E" of the offer of

possession, the total construction expenditure was Rs.10,26,38,348.00/- while construction material on which escalation has been calculated as per norms of CPWD works out to be Rs.7,69,78,761/-. The respondents have taken base cost as per the index prevalent as on September 2009. For the financial year 2010-11, as per the said index, cost escalation has been Rs.136/- per sq. ft. in April and Rs.139/- per sq. ft. in October. The average of the two comes out to be Rs.137.5/- per sq. ft. From the said figure of Rs.137.5/-, the cost escalation index of September 2009 i.e., Rs.113/- has been deducted which comes out to be Rs.24.5/- per sq. ft. Escalation has been calculated on this differential amount and to calculate the same figures are factored (i.e., Rs.24.5/- per sq. ft. has been divided by Rs.113 and multiplied by 100) which comes out to be 21.68% which is the total escalation in the year 2010-11. In this manner the total escalation till March' 2014 has been calculated and explained in detail in annexure "E" of the offer of possession.

28. It is further submitted that the construction was also affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide its order NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondents.

29. It was communicated to the complainants vide email dated 26.02.2020 that the construction was nearing completion and the respondent were confident to handover possession of the unit in question by April 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), construction came to a halt and it took some time to get the labour mobilized at the site.
30. It is submitted that the construction of tower in which the unit is located has been completed and the occupation certificate for the same has also been received where after, the respondents have already offered possession to the complainants. However, the complainants, being investor do not wish to take possession as the real estate market is down and there are no sales in secondary market, thus has initiated the present frivolous litigation.
31. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Observations of the authority

32. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST & VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges are involved in all these cases and others pending against the respondents in this project as well as in other projects developed by them, so, vide orders dated 06.07.2021 and 17.08.2021, a committee

headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee and a report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were given an opportunity directed to file objections to that report if any. The complainants and other allottees did not file any objections. Though the respondents sought time to file the objections but, did not opt for the same despite time given in this regard. The executive summary of the committee report and the recommendations so made in respect of the project in question i.e., 'Spacio' are as under:

- a) **Super area:** The respondent has increased the super area of the unit from 1800 sq. ft. to 1865 sq. ft. at the time of offer of possession in the Spacio project, whereas the covered area of the unit remains the same.

Recommendation:

- i. The inclusion of an area under the pool balancing tank as a common area is not justified. Hence, the area under the pool balancing tank, measuring 684.28 sq. ft. (Spacio), may be excluded from the category of common areas.
- ii. The area under the feature wall elevation measuring 665.04 sq. ft. (Park Spacio) may be excluded from the common areas being an architectural feature.
- iii. Consequent to exclusion of the above-mentioned components from the list of the common areas, the additional common

areas will decrease from 45713.29 sq. ft. to 38363.97 sq. ft (Park Spacio). Accordingly, the saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio).

- b) **Cost escalation:** The company considers the estimated cost of construction as certified by the chartered accountant and thereafter applies various indexation and demanded cost escalation of Rs. 588 per sq. ft.

Recommendation: After analysis of various factors as detailed in the committee report, the committee is of the view that an escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer.

- c) **STP Charges and Electric Connection (ECC) + Fire Fighting (FF)+Power-Backup Charges (PBIC):**The following recommendations were made:

Recommendation:

- i. The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges are demanded from the allottees of Spacio @ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.
- ii. The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

- d) **Annual Maintenance Charges:** This charge should be taken on a monthly/quarterly basis rather than annual basis.
Recommendation: After deliberation, it was agreed upon that the developer will recover maintenance charges quarterly, instead of annually.
- e) **Car Parking Charges:** The complainants requested that the car parking allotted to the allottees be also included in the conveyance deed being an integral part of the units.
Recommendation: After discussion, the committee finds no dispute on the issue and it was agreed upon that the car parking along with its cost shall be included in the conveyance deed to be executed with the allottees.
- f) **Holding Charges:** The committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.
- g) **Club membership charges:** The complainants contended that the club is not part of the common areas to be transferred to the RWA. It will be operated and managed by the respondent or third party on a commercial basis. Hence, they should not be forced to pay for this facility as CMC and requested that the club membership be made optional.
Recommendation:
- i. After deliberation, it was agreed upon that club membership will be optional.

- ii. Provided, if an allottee opts out to avail of this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.
- iii. In view of the consensus arrived, the club membership may be made optional. The respondent may be directed to refund the CMC if any request is received from the allottee in this regard with condition that he shall abide by the above proviso.
- h) **Preferential location charges:** The contention of the complainants were limited to the extent that it may be ensured that the PLCs have been levied by the respondents as prescribed in the FBAs. They did not point out any specific case where the respondents have demanded PLCs beyond the scope of the FBAs.
Recommendation: In view of this, the Committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with all the complainants in the projects Spacio and Park Generation.
- i) **EDC/IDC:** The contention of the complainant was limited to the extent that they have already paid the full and final amount of EDC/IDC as part of development charges prescribed in the FBAs. They requested the respondent may be restrained from making any further demands on this account in the future.
Recommendation: The committee observes that the concern of the complainants is genuine and recommends that the respondent be

directed not to raise any undue and inappropriate demands in the future.

- j) **GST/VAT/Service Tax:** The GST came into force in the year 2017, therefore, it is a fresh tax. The possession of the flat was supposed to be delivered before the implantation of GST, therefore, the tax which has come into existence after the deemed date of delivery should not be levied being unjustified. The main questions which arose for the consideration of the committee were:

- i. Whether the respondent is justified in demanding GST, VAT, and service tax?
- ii. If applicable, what is the rate of HVAT, GST, and Service Tax to be charged to customers?

Recommendation: After analysis of various factors as detailed in the committee report, The committee is view that the following taxation to be allowed:

- i. **Haryana Value Added Tax:** The promoter is entitled to charge VAT from the allottee for the period up to 30.06.2017 as per the rate specified in the below table:

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes
From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes

- ii. Service Tax: The service tax rate to be charged from the customer:

Service tax Rates/Date	Basic Rates of Service Tax	Education Cess	Secondary & Higher Education Cess	Swatch Bharat Cess	Krishi Kalyan	Total Tax Rate	Abatement %	Effective Tax Rate
01 July 2010 to 31st March 2012	10%	2%	1%			10.30%		10.30%
1st April 2012 to 31st May 2015	12%	2%	1%			12.36%	75%/70%	3.71%
1st June 2015 to 14th Nov 2015	14%					14%	75%/70%	4.20%
15th Nov 2015 to 31st May 2016	14%			0.5%		14.50%	75%/70%	4.35%
1st June 2016 to 30th June 2017	14%			0.5%	0.5%	15%	70%	4.50%

- iii. Project Specific GST to be refunded:

Particulars	Spacio
HVAT (after 31.03.2014) (A)	4.51%
Service Tax (B)	4.50%
Pre-GST Rate(C =A+B)	9.01%
GST Rate (D)	12.00%
Incremental RateE= (D-C)	2.99%

Less: Anti-Profitteering benefit passed if any till March 2019 (F)	2.63%
Amount to be refunded Only if greater than (E- F) (G)	0.36%

33. The summarised recommendations of the committee for the project in question i.e., Spacio in tabular form are as under:

Sr. No	Key Issues	Recommendations
1.	Super Area	Consequent to exclusion of the pool balancing tank and area under the feature wall from the list of the common areas, the additional common areas will decrease from 45713.29 sq. ft. to 38363.97 sq. ft (Spacio). Accordingly, the saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Spacio).
2.	Cost Escalation:	After analysis of various factors as detailed in the committee report, The committee is of the view that an escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer.
3.	STP Charges and Electric Connection (ECC) + Fire Fighting (FF)+Power-Backup Charges (PBIC):	The allottees of Spacio may be charged on the pattern of the allottees of Park Generation in respect of STP charges (@INR 8.85 sq. ft.) and ECC+FFC+PBIC (@ INR 100 per sq. ft.)
4.	Annual Maintenance Charges	It was agreed upon that the developer will recover maintenance charges quarterly, instead of annually
5.	Car Parking Charges:	After discussion, the committee finds no dispute on the issue and it was agreed upon that the car parking along with its cost shall be included in the conveyance deed to be executed with the allottees

6.	Holding Charges:	The committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer			
7.	Club membership charges	It was agreed upon that club membership will be optional			
8.	Preferential location charges	In view of this, the committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with all the complainants in the projects Spacio and Park Generation			
9.	EDC/IDC	The committee observes that the concern of the complainants is genuine and recommends that the respondent be directed not to raise any undue and inappropriate demands in the future.			
10.	HVAT	Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
		Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes
		From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes
11.	Service Tax	Service tax Rates/Date		Effective Tax Rate after abatement	
		01 July 2010 to 31st March 2012		10.30%	



		1st April 2012 to 31st May 2015	3.71%
		1st June 2015 to 14th Nov 2015	4.20%
		15th Nov 2015 to 31st May 2016	4.35%
		1st June 2016 to 30th June 2017	4.50%
12.	GST	Particulars	Spacio
		HVAT (after 31.03.2014) (A)	4.51%
		Service Tax (B)	4.50%
		Pre-GST Rate (C=A+B)	9.01%
		GST Rate (D)	12.00%
		Incremental Rate E= (D-C)	2.99%
		Less: Anti-Profitteering benefit passed if any till March 2019 (F)	2.63%

F. Jurisdiction of the authority

34. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints for the reasons given below:

F.I Territorial jurisdiction

35. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office situated in Gurugram. In the present case, the project in question is situated within the planning area of

Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaints.

F.II Subject matter jurisdiction

36. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

37. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaints regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the objections raised by the respondents

G.I Objection regarding untimely payments done by the complainants

38. It has been contended that the complainants have made default in making payments as a result thereof; the respondents had to issue various reminder letters. Clause 11 of the buyer's agreement provides

that timely payment of instalment being the essence of the transaction, and the relevant clause is reproduced below:

"11.1. Time is of essence

Timely Payments of all amounts as per this Agreement, payable by the Purchaser(s) shall be the essence of this Agreement. If the Purchaser(s) neglects, omits, ignore, or fails, for any reason whatsoever, to pay to the Seller any of the instalments or other amounts and charges due and payable by the Purchaser(s) under the terms and conditions of this Agreement or by respective due dates thereof or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions herein contained within the time stipulated or agreed to, the Seller / Confirming Party shall be entitled to cancel / terminate this Agreement forthwith and forfeit the booking amounts or amounts paid upto the Earnest Money and Non-Refundable Amount. The Seller/Confirming Party is not under any obligation to send reminders for the payments to be made by the Purchaser(s), as per schedule of payments and for the payments to be made as per demand by the Seller/Confirming Party."

39. At the outset, it is relevant to comment on the said clause of the agreement i.e., "11.1 TIME IS OF ESSENCE" wherein the payments to be made by the complainants had been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even a single default by the allottees in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite the complainants being in default in making timely payments, the respondents have not exercised their discretion to terminate the buyer's agreements.

G.II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

40. Another contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties.
41. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having

retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

42. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

43. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any Act/ statutory provision and are not unreasonable or exorbitant in nature.

H. Findings on the relief sought by the complainants

H.I Delay possession charges

44. In all the complaints, the allottees intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

45. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

3. Possession

*3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable 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 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 handover the possession of the Flat to the Purchaser(s) within a period of **36 months from the date of booking/registration of Flat**. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of **180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority....."*** (Emphasis supplied)

46. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not

being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.

47. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.
48. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking/registration of the flat. The booking of the flat was made on 06.12.2010 as per receipt on page no. 22 of complaint. Therefore, the

due date of handing over possession comes out to be 06.12.2013. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 15.01.2021, it is evident that the promoter applied for occupation certificate only on 21.01.2020 and 21.08.2020 which is later than 180 days from the due date of possession i.e., 06.12.2013. This clause clearly implies that the grace period was asked for filing and pursuing occupation certificate, therefore as the promoter had applied for the occupation certificate much later than the contractual period of 180 days and does not fulfil the criteria for grant of the grace period. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

49. **Entitlement to delay possession charges to the subsequent allottee:** The entitlement to delay possession charges to a subsequent allottee has already been decided by the authority on 12.08.2021 in complaint bearing no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd. wherein it was held that the term "allottee" as defined under section 2(d) of the Act also includes and means the subsequent allottee, hence the rights and obligation of the subsequent allottee and the promoter will also be governed by the said builder buyer's agreement. The relevant para of the judgement is reproduced below:

- "59. Therefore, keeping in view the aforesaid principles of law and arguments advanced by both the parties, the authority is of the view that four bifurcations can be made in respect to entitlement for delay possession charges to the subsequent allottee which are as follows:*
- a. Where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession:*

.....So, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.

- b. Where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession but before the coming into force of the Act:**

...Therefore, in light of **Laureate Buildwell judgment (supra)**, the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier.

- c. Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and before the registration of the project in question:**

...Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and before the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement.

- d. Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question:**

...Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement."

- 50. Validity of offer of possession:** It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after

detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

In the present bunch matter, the possession has been offered by the respondent after receipt of the occupation certificate from the concerned competent authority. Therefore, the said condition stands fulfilled by the respondent.

- ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render unit uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of the

subject unit with such minor defects under protest. This authority will award suitable relief for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is **not habitable** at all because the plastering work is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

In respect of the above, the counsel for the respondent has made a statement at bar that the subject units are in habitable condition except the finishing works which are usually done post receipt of the outstanding dues in terms of the offer of possession and the same has been mentioned in letter of offer of possession. The authority has taken note of the fact that, in the present complaints, the respondent has placed on record all the relevant pre-requisite documents/approvals before the said committee in respect of the completion of common facilities and other infrastructural facilities which in itself suggest that the units are in habitable condition. It is evident from the statement of account placed on record that the allottees have failed to clear outstanding dues as per the payment plan opted by them and thereby failed to take possession of the subject unit. Therefore, upon issuance of fresh statement of account by the respondent/promoter after adjustment of interest for the delayed period and in terms of principles incorporated in the present order, the complainants are directed to pay outstanding dues, if any, within a period of 30 days from intimation

of revised statement of account. Thereafter, the respondent shall handover possession of the subject unit post completion of finishing works to the allottees within 60 days of clearance of outstanding dues and completion of necessary documentation. For further clarification, the respondent is directed not to ask the allottees to sign an indemnity of any nature whatsoever, which is prejudicial to the rights of the allottees as has been decided by the authority in complaint bearing no. **4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd**

- iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, the allottees have alleged that certain additional demands were made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law.

In the present bunch matters, the allottees have challenged the demand on account of increase in super area, levy of escalation cost, VAT& GST charges, advance maintenance charges, STP charges, electrification, firefighting and power backup charges, club membership charges, administrative charges and holding charges. *It is observed that the aforesaid charges form an integral part of the buyer's agreement executed inter se parties and the allottees had agreed to pay the same.* The authority is of the view that the charges payable under aforesaid heads are as per the

agreed terms and conditions of the buyer's agreement, therefore, the said charges cannot be termed as illegal/arbitrary. The validity of these charges was challenged by the allottees by taking a plea, the same being illegal and beyond the scope of agreement. Though the respondent-developer defended raising of charges on these counts, but the authority appointed a committee headed by Sh. Manik Sonawane IAS (retired) to examine the legality and validity of those charges. The said committee after due deliberations, associating the representatives of allottees as well as builder-promoter and going through the record, revised those charges while submitting its report as discussed in aforesaid para of this order and not objected to by either of the side. So, in view of the report submitted by the committee and the detailed findings recorded in this regard being reasoned one, the amount to be charged in respect of the same stands revised in terms of the present order. Furthermore, the respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

51. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the lead complaint, the occupation certificate was granted by the competent authority on 15.01.2021. However, the respondent offered the possession of the unit in question to the complainants only on 27.01.2021. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of

possession. Therefore, in the interest of natural justice, the allottee should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier.

52. It is further clarified that the delay possession charges shall be calculated on total amount received by the developer/promoter after excluding the amount of taxes collected on behalf of the concerned statutory authority, the amount of such taxes is not payable to the builder and are rather required to be passed on by the builder to the concerned department/authorities. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottees towards delay in delivery of possession.
53. In light of the above, the delayed possession charges are allowed in individual cases w.e.f. the date of admissibility till offer of possession plus 2 months after obtaining occupation certificate or actual handing over of possession, whichever is earlier and the same has been mentioned in the column 9 of the table given below:



Project: SPACIO, Sector-37-D, Gurugram								
Possession Clause(3.1):the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.								
Note:- The grace period is not included while computing the due date of possession.								
1	2	3	4	5	6	7	8	9
Sr. No	Complaint No. Title Date of filing	Reply status	Unit No.	Date of booking	Date of agreement	Due date of possession	Offer of possession	Period for which the complainant(s) is/are entitled to DPC
1	1027/2020 Amrendra Kumar Vs. M/s BPTP Limited and another 02.03.2021	Reply Received	P-1006, 10 th floor, Tower-P (Page no. 33 of complaint)	13.08.2010 (Vide receipt on page no. 22 of complaint)	29.03.2011 (page no. 112 of reply)	13.08.2013 [36 months from date of booking]	29.01.2021 (Vide possession letter on page no. 204 of reply) TC- Rs. 44,70,961 AP- Rs. 31,69,446	w.e.f. 13.08.2013 till 29.03.2021
2	1065/2021 Jayant Sharma Vs. M/s BPTP Limited and another 02.03.2021	Reply Received	P-1701, 17 th floor, Tower-P (Page no. 36 of complaint)	25.08.2010 (vide receipt on page no. 22 of complaint)	16.03.2011 (Page no.31 of complaint)	25.08.2013 (36 months from the date of booking)	29.01.2021 (Annexure R-19 on page no. 182 of reply) TC- 46,96,306 AP- 33,81,656	w.e.f. 25.08.2013 till 29.03.2021

3	928/2021 Pawan Kumar Vs. M/s BPTP Limited and another 02.03.2021	Reply Received	M-603, 6 th Floor, Tower-M (Page no. 30 of complaint)	09.07.2010 (Vide payment receipt on page no. 22 of complaint)	04.02.2011 (Page no. 29 of complaint)	09.07.2013 (36 months from the date of booking)	29.01.2021 (Vide letter of possession on page no. 140 of reply) TC- Rs. 45,01,955 AP- Rs. 32,75,292	w.e.f 09.07.2013 till 29.03.2021
4	1289/2021 Mrs. Vanita Padmakar Tambare and Mr. Padmakar kamalakar Tambare Vs. M/s BPTP Limited and another 02.03.2021	Reply Received	P-1203, Tower-P (Page no. 35 of complaint)	30.07.2010 (Vide payment receipt on page no. 22 of complaint)	19.12.2016 (Page no. 27 of complaint)	30.07.2015 (60 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 210 of reply) TC- Rs. 56,07,466 AP- Rs. 40,77,774	w.e.f 26.07.2019 till 27.03.2021
5	1177/2021 Sandeep Verma Vs. M/s BPTP Limited and another 05.03.2021	Reply Received	M-602, 6 th Floor, Tower-M (Page no. 32 of complaint and also alleged by complainant at page no. 8 of complaint)	15.11.2010 (vide payment receipt on page no. S2 of reply)	25.03.2011 (on page no. 31 of complaint)	15.11.2013 (36 months from the date of booking)	20.02.2021 (page no. 150 of reply) TC- Rs. 81,64,237 AP- Rs. 61,03,800	w.e.f 15.11.2013 till 20.04.2021



6	1192/2021 Dheeraj Khajuria Vs. M/s BPTP Limited and another 05.03.2021	Reply Received	M-2001 Floor 20th Tower-M (Page no. 32 of complaint)	30.07.2010 (vide receipt on page no. 21 of complaint)	10.02.2011 (Page no. 25 of complaint)	30.07.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 144 of reply) TC- Rs. 54,43,882 AP- Rs. 39,50,411	w.e.f 30.07.2013 till 29.03.2021
7	1285/2021 Ashish Mehta Vs. M/S BPTP Limited and another 09.03.2021	Reply Received	Q-1506, 15 th Floor Tower-Q (Page No. 34 of complaint)	29.07.2010 (Receipt Vide Dated on Page no. 22 of complaint)	04.04.2011 (pg no. 26 of complaint)	29.07.2013 (36 months from the date of execution.)	29.01.2021 (on page no. 135 of reply) TC- Rs. 44,54,870 AP- Rs. 31,60,865	w.e.f 29.07.2013 till 29.03.2021
B	1217/2021 Moksh Sharma Vs. M/s BPTP Limited and another 17.03.2021	Reply Received	Q-103, Tower-Q (Page no. 14 of complaint)	07.08.2010 (vide receipt on page no. 21 of complaint)	26.04.2011 (Page no. 28 of complaint)	07.08.2015 (60 months from the date of booking)	29.01.2021 (vide offer of possession letter on page no. 171 of reply) TC- Rs. 57,04,004 AP- Rs. 41,52,743/-	w.e.f 07.08.2015 till 29.03.2021
9	1209/2020 Hemant K. Talekar and Mrs. Anuja Hemant Talekar Vs. M/s BPTP Limited and another 18.03.2021	Reply Received	P-504, 5 th Floor Tower-P (Page no. 32 of complaint)	26.07.2010 (vide receipt on page no. 42 of reply)	01.04.2011 (on page no. 31 of complaint)	26.07.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 126 reply) TC- Rs. 55,25,468 AP- Rs. 4000179/-	w.e.f 26.07.2013 till 29.03.2021

10	1245/2021 Puneet Manjal Vs. M/s BPTP Limited and another 18.03.2021	Reply Received	M-804, 8 th floor, Tower-M (Page No. 33 of Complaint)*	21.07.2010 (vide payment of receipt on page no. 22 of complaint)	30.03.2011 (Page no. 25 of complaint)	21.07.2013 (36 months from the date of booking)	29.01.2021 (Vide offer of possession on page No. 169 of reply) TC- Rs. 45,34,885 AP- Rs. 33,05,850/-	w.e.f 21.07.2013 till 29.03.2021
11	1228/2021 Vineet Umesh Gupta Vs. M/s BPTP Limited and another 18.03.2021	Reply Received	Q-505, 5 th floor, tower-Q (Page no. 41 of complaint)	06.12.2010 (vide receipt on page no. 22 of complaint)	07.09.2011 (on page no. 33 of complaint)	06.12.2013 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 175 of complaint) TC- Rs. 79,46,346/- AP- Rs. 58,53,593/-	w.e.f 06.12.2013 till 27.03.2021
12	1226/2021 Sunita Garg Vs. M/s BPTP Limited and another 19.03.2021	Reply received	M-1101, 11 th floor, Tower-M (Page no. 33 of complaint)	15.10.2010 (vide receipt on page no. 21 of complaint)	14.04.2011 (Page no. 26 of complaint)	15.10.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 149 of reply) TC- Rs. 56,65,809 AP- Rs. 41,30,985/-	w.e.f 15.10.2013 till 29.03.2021



13	1238/2021 Amitab Khare and Mrs. Seema KHare Vs. M/s BPTP Limited and another 19.03.2021	Reply Received	M-705, 7 th floor, Tower-M (Page No. 40 of complaint)	22.02.2011 (vide receipt on page no. 21 of complaint)	18.05.2011 (Page no. 35 of complaint)	22.02.2014 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 142 of reply) TC- Rs. 70,11,909 AP- Rs. 50,38,954/-	w.e.f 22.02.2014 till 29.03.2021
14	1237/2021 Rajesh Rana Vs. M/s BPTP Limited and another 19.03.2021	Reply received	M-503, 5 th floor, Tower-M (Page no. 28 of complaint)	03.08.2010 (page no. 21 of complaint)	24.03.2011 (Page no. 23 of complaint)	03.08.2013 (36 months from the date of booking)	29.01.2021 (Vide possession letter on page no. 144 of reply) TC- Rs. 46,74,434 AP- Rs.33,31,810/-	w.e.f 03.08.2013 till 29.03.2021
15	1227/2021 Vikrant Mishra and Mrs. Arti Mishra Vs. M/s BPTP Limited and another 19.03.2021	Reply received	M-1006, 10 th floor, Tower-M (Page no. 39 of complaint)	07.09.2010 (page no. 23 of complaint)	17.03.2011 (on page no. 31 of complaint)	07.09.2013 (36 months from the date of booking)	29.01.2021 (Vide possession letter on page no. 133 of reply) TC- Rs. 55,21,851 AP- Rs. 39,97,762/-	w.e.f 07.09.2013 till 29.03.2021

16	1407/2021 Subhamvada Singh Vs. M/s BPTP Limited and another 24.03.2021	Reply received	M-802, Tower-M (Page no. 51 of the complaint)	30.12.2010 (vide receipt on page no. 75 of the reply)	08.11.2016 (Page no. 45 of the complaint) SA_06.03.2015	30.12.2015 (60 months from the date of booking)	27.01.2021 (vide possession letter on page no. 198 of reply) TC- Rs. 60,13,100/- AP- Rs. 49,41,193/-	w.e.f 30.12.2015 till 27.03.2021
17	1218/2020 Lokesh Malik and Mrs. Anjali Malik Vs. M/s BPTP Limited and another 26.03.2021	Reply received	Q-2005, 20 th floor, Tower-Q (Page no. 31 of complaint)	31.01.2011 (vide receipt on page no. 59 of reply)	18.05.2011 (Page no. 26 of complaint)	31.01.2014 (36 months from the date of booking)	29.01.2021 (vide possession letter on page no. 161 of reply) TC- Rs. 79,15,309 AP- Rs. 58,17,7439/-	w.e.f 31.01.2014 till 29.03.2021
18	1214/2021 Himanshu Malik and Priti Malik Vs M/s BPTP Limited and another 26.03.2021	Reply received	Q-2002, 20 th floor, Tower-Q (Page no. 33 of complaint)	13.01.2011 (vide receipt on page no. 22 of complaint)	18.05.2011 (Page no. 27 of complaint)	13.01.2013 (calculate d from the date of booking)	29.01.2021 (vide letter of possession on page no. 160 of reply) TC- Rs. 80,26,397- AP- Rs. 58,91,462/-	w.e.f 13.01.2013 till 29.03.2021



19	1229/2021 Amit Bhardwaj Vs. M/s BPTP Limited and another 26.03.2021	Reply received	N-1401 Floor 14th Tower-N (Page no. 31 of complaint)	14.08.2010 (vide receipt on page no. 51 of reply)	05.05.2011 (Page no. 24 of complaint)	14.08.2013 (36 months from the date of booking)	29.01.2021 (Page no. 160 of reply) TC- Rs. 53,67,369 AP- Rs. 36,29,278/-	w.e.f 14.08.2013 till 29.03.2021
20	1900/2021 Prem Singh Parihar Vs. M/s BPTP Limited and another 15.04.2021	Reply received	K-1704, Tower-K (Page no. 34 of complaint)	15.07.2010 (as alleged by the complainant in complaint)	15.11.2019 (Page no. 29 of complaint)	15.07.2015 (60 months from the date of booking)	05.08.2020 (vide offer of possession on page no. 180 of reply) TC- Rs. 45,43,666 AP- Rs. 34,49,872/-	w.e.f 15.05.2020 till 05.10.2020
21	2374/2021 Rinchen Palmo and Mr. Dorjey Namgail Vs. M/s BPTP Limited and another 09.06.2021	Reply received	L-1904 Floor 19th Tower-L (Page no. 34 of complaint)	24.01.2012 (on page no. 22 of complaint)	06.02.2013 (Page no. 25 of complaint)	06.02.2016 (36 months from the date of execution of FBA)	10.03.2021 (vide offer of possession letter on page no. 189 of reply) TC- Rs. 77,33,581 AP - Rs. 59,54,184	w.e.f 06.02.2016 till 10.05.2021

22	2668/2021 Mrs. Savita Singh Vs. M/s BPTP Limited and another 07.07.2021	Reply Received	P-101, 1 st floor, Tower-P (page no. 47 of complaint)	10.08.2010 [vide payment of receipt on page no. 28 of complaint]	29.03.2011 [p.no. 44 of complaint]	10.08.2013 (36 months from the date of booking)	27.01.2021 [page no. 250 of reply] TC- Rs. 48,02,500 AP- Rs. 29,46,908	w.e.f 10.08.2013 till 27.03.2021
23	2739/2021 Smarth Dwivedi and Anita Dwivedi Vs. M/s BPTP Limited and another 13.07.2021	Reply Received	P-1105, 11 th floor, Tower-P (page no. 30 of complaint)	10.01.2011 (vide payment of receipt on page no. 22 of complaint)	13.08.2011 (page no. 29 of complaint)	10.01.2014 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 138 of reply) TC- Rs. 81,21,607 AP- Rs. 60,43,607	w.e.f 10.01.2014 till 29.03.2021
24	2375/2021 Rajesh Malhotra Vs. M/s BPTP Limited and another 09.06.2021	Reply received	P-405, 4 th floor, Tower-P (Page no. 44 of complaint)	10.01.2011 (vide payment of receipt on page no. 19 of complaint)	18.05.2011 (Page no. 37 of complaint)	10.01.2013 (36 months from the date of booking)	29.01.2021 (vide letter of possession on page no. 157 of reply) TC- Rs. 82,79,879 AP- Rs. 61,93,349	w.e.f 10.01.2013 till 29.03.2021



25	80/2021 Ritu Grover Vs. M/s BPTP Limited and another 13.01.2021	Reply Received	K-595, 5 th floor, Tower-K (Page no. 37 of complaint)	09.08.2010 (as alleged by the complainant in complaint on page no. 6)	17.03.2011 (Page no. 33 of complaint)	09.08.2013 (36 months from the date of booking)	05.08.2020 (vide offer of possession on page no. 186 of reply) TC- Rs. 72,58,705 AP- Rs. 51,78,771	w.e.f 09.08.2013 till 05.10.2020
26	1617/2021 Anjali Vs. M/s BPTP Limited and another 31.03.2021	Reply received	M-1404, 4 th floor, Tower-M (Page no. 32 of complaint)	12.11.2010 (vide allotment cum demand letter on page no. 101 of reply)	21.03.2011 (Page no. 27 of complaint)	12.11.2013 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 242 of reply) TC- Rs. 49,70,131 AP- Rs. 36,26,125	w.e.f 01.01.2019 till 27.03.2021
27	1615/2021 Nalini Kant thakur and annu Vs. M/s BPTP Limited and another 31.03.2021	Reply received	P-2004, 20 th floor, Tower-P (Page no. 35 of complaint)	11.04.2011 (vide allotment cum demand letter on page no. 28 of complaint)	10.05.2011 (Page no. 31 of complaint)	11.04.2014 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 139 of reply) TC- Rs. 59,81,207 AP- Rs. 39,25,287	w.e.f 11.04.2014 till 27.03.2021

28	1725/2021 Kulbhasan Gupta Vs. M/s BPTP Limited and another 05.04.2021	Reply Received	M-2006, 20 th floor, Tower-M (page no. 33 of complaint)	01.09.2011 (vide payment receipt on page no. 21 of complaint)	03.11.2011 (on page no. 26 of complaint)	01.09.2014 (36 months from the date of booking)	29.01.2021 (on page no. 173 of reply) TC- Rs. 65,60,078 AP- Rs. 49,19,321	w.e.f. 01.09.2014 till 29.03.2021
29	2027/2021 Parveen Jaiswal Vs. M/s BPTP Limited and another 16.04.2021	Reply received	M-1602, 16 th floor, Tower-M (Page no. 40 of complaint)	07.06.2011 (vide receipt on page no. 85 of complaint)	17.06.2011 (Page no. 36 of complaint)	07.06.2014 (36 months from the date of booking)	17.02.2021 (vide offer of possession on page no. 158 of reply) TC- Rs. 92,74,683 AP- Rs. 67,47,004	w.e.f. 07.06.2014 till 17.04.2021
30	1642/2021 Ajay Kumar Vs. M/s BPTP Limited and another 02.04.2021	Reply received	Q-1806, 18 th floor, Q tower (Page no. 85 of complaint)	23.08.2010 (vide receipt on page no. 34 of complaint)	29.01.2018 (Page no. 80 of complaint)	23.08.2015 (60 months from the date of booking)	27.01.2021 (vide offer of possession page no. 187 of reply) TC- Rs. 46,44,516 AP- Rs. 33,30,114	w.e.f. 01.05.2017 till 27.03.2021



31	2061/2021 Sushila Malik and Shail Anand Vs. M/s BPTP Limited and another 19.04.2021	Reply Received	P-804, 8 th floor, P-Tower (Page no. 56 of complaint)	12.11.2010 (vide allotment cum demand letter on page no. 50 of complaint)	04.04.2011 (Page no. 53 of complaint)	12.11.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 185 of complaint) TC- Rs. 56,23,281 AP- Rs. 40,87,157	w.e.f 12.11.2013 till 29.03.2021
32	2063/2021 Sushila Malik and Shail Anand Vs. M/s BPTP Limited and another 19.04.2021	Reply received	K-805, 8 th floor, Tower K (Page no. 58 of complaint)	10.08.2010 (Vide payment receipt page no. 47 of complaint)	16.03.2011 (Page no. 50 of complaint)	10.08.2013 (36 months from the date of booking)	04.08.2020 (vide offer of possession on page no. 174 of reply) TC- Rs. 77,38,965 AP- Rs. 56,67,056	w.e.f 10.08.2013 till 04.10.2020
33	3660/2021 Varun Sharma & Neha Garg Vs. M/s BPTP Limited and another 13.09.2021	Reply received	L-101 Floor 1st Tower L (Page no. 33 of complaint)	05.08.2010 (vide receipt on page no. 35 of complaint)	25.03.2011 (Page no. 36 of complaint)	05.08.2013 (36 months from the date of booking)	13.08.2020 (vide offer of possession on page no. 148 of reply) TC- Rs. 45,95,191 AP- Rs. 32,80,252	w.e.f 05.08.2013 till 13.10.2020



Complaint no. 1228 of 2021 and 36 others

34	3732/2021 Gurjit Kaur Anand Vs. M/s BPTP Limited and another 04.10.2021	Reply received	N-106 1st Floor Tower-N (Page No. 32 of complaint)	10.09.2010 (vide payment receipt on page no. 33 of complaint)*	21.03.2011 (Page no. 34 of complaint) SA-18.04.2012	10.09.2013 (36 months from the date of booking)	27.01.2020 (vide offer of possession on page no. 197 of reply) TC- Rs. 50,67,647 AP- Rs. 36,33,382	w.e.f 10.09.2013 till 27.03.2020
35	3104/2021 Balraj Vadehra Vs. M/s BPTP Limited and another 11.08.2021	Reply received	M-104 Floor 1st, Tower-M (Page no. 26 of complaint)	28.10.2010 (vide allotment cum demand letter on page no. 46 of reply)	27.12.2011 (Page no. 22 of complaint)	28.10.2013 (36 months from the date of booking)	29.01.2021 (vide offer of possession on page no. 115 of reply) TC- Rs. 46,72,502 AP- Rs. 34,34,658	w.e.f 28.10.2013 till 29.03.2021
36	CR/3212/2021 Kusum Singh and Rajender Singh Vs. M/s BPTP Limited and another 25.08.2021	Reply Received	Q-802, 8th Floor, Tower-Q (page no. 32 of complaint)	21.12.2010 (vide payment receipt on page no. 20 of complaint)	07.04.2011 (page no. 25 of complaint)	21.12.2013 (36 months from the date of booking)	20.02.2021 (vide offer of possession on page no. 139 of reply) TC- Rs. 80,08,189 AP- Rs. 59,32,122	w.e.f 21.12.2013 till 20.05.2021

37	CR/1133/2021 Ajay Sharma Vs. M/s BPTP Limited and another 24.04.2021	Reply Received	Q-G001, ground floor, Tower-Q (page no. 48 of complaint)	25.01.2021 (page no. 52 of reply)	08.08.2021 (page no. 33 of complaint)	25.01.2021 (36 months from the date of booking)	27.01.2021 (vide offer of possession on page no. 156 of reply) TC- Rs. 63,90,559 AP- Rs. 48,86,451	w.e.f 25.01.2015 till 27.03.2021
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54. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

56. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 10.05.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
57. The definition of term 'interest' as defined under section (za) of the Act provides that 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. The relevant section is reproduced below:

"(za) "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;"*

58. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

H.II Increase in super area

59. It is contended that the respondents have increased the super area of the subject unit vide letter of offer of possession dated 27.01.2021 without giving any formal intimation to, or by taking any written consent from the allottees. The said fact has not been denied by the

respondents in reply. The authority observes that the said increase in the area has been as per clause 5 of the buyer's agreement. The relevant clause from the agreement is reproduced as under: -

"5. ALTERATIONS IN PLANS, DESIGN AND SPECIFICATION AND RESULTANT CHANGES IN AMOUNTS PAYABLE

The seller/confirming party is in the process of developing residential blocks in the SPACIO in accordance with the approved layout plan for the Colony. However, if any changes, alterations, modifications in the tentative building plans and/or tentative drawings are necessitated during the construction of the units or as may be required by any statutory authority(s), or otherwise, the same will be effected suitably, to which the purchaser(s) shall raise no objection and hereby gives his unconditional consent..."

60. On perusal of record, the super area of the unit was 1800 sq. ft. as per the flat buyer's agreement and it was increased by 65 sq. ft. vide letter of offer of possession, resulting in total super area of 1865 sq. ft. The said committee in this regard has made following recommendations while submitting report:

"The above site report was discussed in the meeting of the Committee held on 08.09.2021 and after detailed deliberation, the Committee makes the following recommendations;

- (i). *The inclusion of area under pool balancing tank as common area is not justified. Hence, the area under pool balancing tank, measuring 432.48 sq.ft. (Park Generation) and 684.28 sq. ft. (Spacio) may be excluded from the category of common areas.*
- (ii). *The area under feature wall elevation measuring 12054 sq. ft. (Park Generation) and 6665.04 sq. ft. (Park Spacio) may be excluded from the common areas being an architectural feature.*
- (iii). *Consequent upon exclusion of the above mentioned components from the list of the common areas, the additional common areas will decrease from 45713.29 sq.ft. to 38363.97 sq. ft (Park Spacio) and from 26300 sq.ft. to 13813.48 sq. ft. (Park Generation). **Accordingly, saleable area/specific area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio) and from 1.2829 to 1.2613 (731573/580001.38, Park Generation). In the instant cases, the super area of the apartment measuring 1865 sq. ft. will reduce to 1851.50 sq.ft. (1434.7 x 1.2905) in park spacio and the super area of***

the apartment measuring 1521 sq.ft. will reduce to 1496.70 sq. ft. (1186.06x1.2613) in park Generation. Accordingly, the respondent company be directed to pass on this benefits to the remaining complainants/allottees.

viii) *The area under the remaining components of the common area mentioned in the Annexure-6(park generation) and Annexure-7 (park spacio) may be allowed to be included in the super area in terms of the enabling clause 2.4 of the agreements."*

61. In the instant case, the super area of the subject flat measuring 1865 sq. ft. would reduce to 1851.50 sq. ft. on the basis of aforesaid recommendations of the committee report. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduced from 1.30 to 1.2905. Accordingly, the super area of the unit be revised and reduced by the respondents and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

H.III Cost escalation

62. The complainants have pleaded that the respondents also imposed escalation cost Rs. 1096620/- after an increase in super area from 1800 to 1865 sq. Ft. without increasing the carpet area. The respondents in this regard took a plea that cost escalation was duly agreed by the complainants at the time of booking and the same was incorporated in the FBA. The undertaking to pay the above-mentioned charges was comprehensively set out in the FBA. In this context following clause of the FBA is noteworthy:

"12.11 The Purchaser(s) understands and agrees that the basic sale price is escalation free except a situation where the cost of steel, cement and other construction materials increase beyond 10%. It is further agreed and understood that the steel price of Rs. 27,500/- per ton and prices of other construction material has been taken as per index price as on 01.09.2009. the company is fully authorised to revise the cost of construction materials, based on market

conditions. The revision, if any, shall be intimated to the purchaser(s) at the time of possession. the purchaser(s) agrees and undertakes to unconditionally accept the price revision and pay the escalated amount without any objection or challenge whatsoever."

63. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. Ft. No objections to the report have been raised by either of the party. Even the committee while recommending decrease in escalation charge has gone through booking form, builder buyer agreement and the issues raised by the promoters to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from Rs. 588 per sq. ft to 374.76 per sq.ft. to the allottees of the project. The relevant recommendations of the committee are reproduced below:

Conclusion:

In view of the above discussion, the committee is of the view that escalation cost of Rs. 374.76 per sq.-feet is to be allowed instead of Rs. 588 demanded by the developer."

64. The authority concurs with the recommendations of the committee and holds that the escalation cost are to be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

H.IV VAT charges

65. It is contended on behalf of complainants that the respondents raised an illegal and unjustified demand towards VAT to the tune of Rs. 46529/-. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondents is otherwise and took

a plea that while booking the unit as well as entering into flat buyer agreement, the allottees agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively.

66. The committee took up this issue while preparing report and after considering the submissions made on behalf of the allottees as well as the promoter, observed that the developer is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme. The same is concluded in the table given below:

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05%	Yes
From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes

67. The authority concurs with the recommendations of the committee and holds that promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.

H.V Advance maintenance charges

68. The issue with respect to the advance maintenance charges was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

"D. Annual Maintenance Charges: After deliberation, it was agreed upon that the respondent will recover maintenance charges quarterly, instead of annually."

69. The authority is of the view that the respondents are right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.

H.VI GST

70. The allottees have also challenged the authority of the respondents builders to raised demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the respondents had raised a demand of Rs.2,68,836/- under the head GST which is illegal and is not liable to repeat to be paid by him.
71. Though the version of respondents is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottees the

applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate(C =A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-Profitteering benefit passed if any till March 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
Amount to be refund Only if greater than (E- F) (G)	0.36%	0.53%	2.99%	0.41%	2.99%	2.99%

72. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.** passed by the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in



delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reasons: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in terms of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

73. In appeal no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi, Haryana Real Estate Appellate Tribunal, Chandigarh has upheld the Prakash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra). The relevant para is reproduced below:

"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 23.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. **So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements.**"

74. In all the complaints mentioned in the table of para 3 of this order, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the view that the respondents/promoters were not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter.

H.VII STP charges, electrification, firefighting and power backup charges

75. In reference to complaint no. 3732 of 2021 titled as Gurjeet Kaur Anand Vs. M/s BPTP Limited, it was contended by the complainants that on 27.01.2021, the respondents issued an offer of possession letter to the complainants along with various unjust and unreasonable demands under various heads i.e. cost escalation of Rs.6,34,452/-, electrification and STP charges of Rs.86,320/-. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of the flat buyer's agreement.

76. The said issue was also referred to the committee and it was observed as under by the committee:

Recommendations:

- 1. The Committee examined the contents of the FBAs executed with the allottees of Spacio and Park Generation and found that various charges to be paid by the allottees find mention at clause 2.1 (a to h). Neither, the electrification charges figures anywhere in this clause, nor it has been defined anywhere else in the FBAs. Rather, ECC+FFC+PBIC charges have been mentioned at clause 2.1 (f). which are to be paid at INR 100 per sq. ft.*



ii. *The term electric connection charges (ECC) has been defined at clause 1.16 (Spacio) and Clause 1.19 (Park Generation), which is reproduced below:*

"ECC" or electricity connection charge shall mean the charges for the installation of the electricity meter, arranging electricity connection (s) from Dakshin Haryana Bijli Vidyut Nigam, Haryana and other related charges and expenses."

iii. *From the definition of ECC, it is clear that electrification charges are comprised in the electric connection charges and the same have been clubbed with FCC+PBIC and are to be charged @INR 100 per sq. ft. Therefore, the Committee concluded that the respondent has conveyed the electrification charges to the allottees of Spacio in an arbitrary manner and in violation of terms and conditions of the agreement. Accordingly, the Committee recommends:*

A. *The term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted and only STP charges be demanded from the allottees of Spacio@ INR 8.85 sq. ft. similar to that of the allottees of Park Generation.*

B. *The term ECC be clubbed with FCC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ INR 100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-Invoice shall be amended to that extent accordingly."*

77. The authority concurs with the recommendation made by the committee and holds that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FCC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio and be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

H.VIII Club membership charges

78. In reference to complaint no. **2027 of 2021** titled as **Praveen Jaiswal Vs. M/s BPTP Limited**, it was contended by the complainants that the respondent has charged a sum of Rs. 1,00,000/- of club membership charge in its letter for offer of possession despite the fact that the construction of the club has not been completed till date. Further, in plethora of judgements of various RERA Authorities; it has been held that the club membership charges cannot be imposed on the allottees till the time the club is not completed and becomes functional. On the other hand, respondent denied that the construction of club has not finished. The respondent has been raising demands as per its whims and fancies.

79. The said issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

"...After deliberation, it was agreed upon that club membership will be optional.

Provided if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.

In view of the consensus arrived, the club membership may be made optional. The respondent may be directed to refund the CMC if any request is received from the allottee in this regard with condition that he shall abide by the above proviso."

80. The authority concurs with the recommendations made by the committee and holds that the club membership charges (CMC) shall be optional. The respondents shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided



by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

H.IX Administrative charges

81. In reference to complaint no. 1407 of 2021 titled as Shubhamvada Vs. M/s BPTP Limited, the complainants have raised an issue w.r.t justification of administrative/registration charges. The respondents issued a tax invoice to the complainants demanding to pay a sum of Rs.16,520/- under the heads of admin charges which are unjust and unreasonable demands. On the other hand, the respondents submitted that the demand on account of administrative charges has been raised in accordance with the terms and conditions of the buyer's agreement.
82. The respondents have raised demand on account of "Admin Charges" amounting to Rs. 16,520/-. With respect to the administrative charges, the following provisions have been made under clause 2.2 and 7.3 of the flat buyer's agreement and the same are reproduced below for ready reference:

"2.2 "Administrative Charges" shall mean such charges as the Seller / Confirming Party will incur at the time of execution, registration, purchase of stamp duty, attestations, registration fees and other miscellaneous expenses incurred by the Seller/ Confirming Party while executing and registration of the Conveyance Deed in favour of the Purchaser(s) at the office of Sub-Registrar of Assurances, Gurgaon

7.3. The Purchaser(s) agree that the Seller/Confirming Party shall execute the Conveyance Deed and get it registered in favor of the Purchaser(s) only after receipt of Total Sale Consideration, other charges and Statutory Dues, including but not limited to any enhancements and fresh incidence of tax along with connected expenses including cost of stamp duty, registration fees/charges and other expenses of the Conveyance Deed which shall be borne and paid solely by the Purchaser(s)."

83. The authority after hearing the arguments and submissions made by the parties is of the view that charges which are defined in the

agreement are payable by the allottee and any charge which is not part of the agreement will not and shall not be charged/payable by the allottee. It has also been observed by the authority time and again that a lot of charges under the head of various names are being demanded from the allottee which are arbitrary and unjustified. In number of judgements by various courts, it has pointed that the terms of the agreement have been drafted mischievously and are ex-facie one sided as also held in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. (supra)*, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

84. The Hon'ble Supreme Court in the matter of **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan (supra)** held that a term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder. The same was also reaffirmed by the Hon'ble Supreme Court in **IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors. (supra)**. Therefore, the charges so claimed under the agreement should be reasonable and agreeable by the allottee. Further, the charges should not be exorbitant and should be charged on average basis as per the normal practice in this regard.
85. With respect to the contention of the allottee regarding demand of administrative, the authority has already decided this issue in

complaint bearing no. CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd. wherein it has been held as under:

"214. The administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹25,000 to ₹80,000. In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹15,000 in furtherance to several complaints received from homebuyers that developers charge 1.5% of the total cost of a property in the name of administrative property registration charge. The authority considering the pleas of the developer-promoter is of the view that a nominal amount of up to Rs.15000/- may be charged by the promoter - developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard. For any other charges like incidental and of like nature, since the same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged."

(Emphasis supplied)

86. In view of the above, the authority directs that a nominal amount of up to Rs.15000/- can be charged by the respondents-promoters for any such expenses which it may have incurred for facilitating the registration of the property as has been fixed by the DTP office in this regard.

H.X Holding charges

87. The allottees have also challenged the authority of the respondent/builders to raised demand by way of holding charges on the ground that since the project is incomplete and the offer of possession is not lawful. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer's agreement.

88. With regards to the same, it has been observed that as per sub-clause 7.5 of clause 7 of the flat buyer's agreement, in the event the allottee fails to take the possession of the unit within the time limit prescribed by the company in its notice for offer of possession, then the promoter shall be entitled to charge holding charges. The relevant clause from the flat buyer's agreement is reproduced hereunder:

"7. POSSESSION AND HOLDING CHARGES:

7.5 Notwithstanding any other provisions stated herein, the Purchaser(s) agrees that if for any reason whatsoever he fails, ignores or neglects to take over the possession of the Unit in accordance with the notice for offer of possession of the Unit sent by the Seller/Confirming Party, Purchaser(s) shall be liable to pay Holding Charges @ Rs.5/- per sq. ft. of the Super Area of the Unit per month till the time Purchaser(s) takes over the possession of the said Unit. The Holding Charges shall be a distinct charge in addition to the Maintenance Charges and not related to any other charges/consideration as provided in terms hereof."

(Emphasis supplied)

89. This issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The relevant para of the committee report is reproduced as under:

"F. Holding Charges: The Committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgement dated 14.12.2020 in civil appeal no. 3864-3889/2020, hereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to

the developer. The Hon'ble Authority may kindly issue directions accordingly."

90. In this regard, the authority place reliance on the order dated 03.01.2020 passed by the Hon'ble NCDRC in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015** wherein it has been held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed." (Emphasis supplied)

91. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra).
92. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the flat. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer

shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

93. In the light of the judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra) and concurring with the view taken by the committee, the authority decides that the respondents promoter cannot levy holding charges on a allottee(s) as it does not suffer any loss on account of the allottee(s) taking possession at a later date even due to an ongoing court case though it would be entitled to interest at the prescribed rate for the period the payment is delayed.

I. Directions of the authority

94. Based on above determination of the authority and acceptance of report of the committee, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the date of admissibility till the offer of possession plus 2 months or the date of actual handing over of the possession of the subject flat to the complainants, whichever is earlier. The period for which the complainant-allottee is entitled to delay possession charges for all the respective complaints are detailed in table given in para 53 of this order. However, the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. Upon issuance of fresh statement of account by the respondent/promoter after adjustment of interest for the delayed period and in terms of principles incorporated in the present order, the complainants are directed to pay outstanding dues, if any, within a period of 30 days from intimation of revised statement of account.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
- v. The respondents shall not charge anything from the complainant(s) which is not part of the builder buyer's agreement save and except in the manner as provided in this order.
- vi. **Increase in area:** The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduce from 1.30 to 1.2905. Accordingly, the super area of the unit be revised and reduced by the respondents and shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

- vii. **Cost escalation:** The authority is of the view that escalation cost to be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- viii. **VAT Charges:** The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.
- ix. **GST Charges:** In all the complaints mentioned in the table of para 3 of this order, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. The authority is of the view that the respondents/promoters are not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements as has been held by Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as *M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi*. Also, the authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed in para 71 of this order.
- x. **Advance maintenance charges:** The authority is of the view that the respondents are right in demanding advance maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, as agreed by the



respondents before the said committee, the respondents shall recover maintenance charges quarterly instead of annually. The demand raised in this regard by the respondents is ordered to be modified accordingly.

- xi. **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.
- xii. **Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottees. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.
- xiii. **Administrative charges:** The authority directs that a nominal amount of up to Rs.15000/- can be charged by the respondents-promoters for any such expenses which it may have incurred for

facilitating the registration of the property as has been fixed by the DTP office in this regard.

xiv. **Holding charges:** The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

95. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

96. Complaints stands disposed off. True certified copy of this order shall be placed in the case file of each matter. There shall be separate decrees in individual cases.

97. Files be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)

Chairman

Dated: 10.05.2022

HARERA
GURUGRAM