Subject: **A report of the Committee constituted by the HARERA to analyse and make recommendations on the issues raised in various complaints filed by the allottees in the group housing and residential plotted colonies, namely, Park Generation, Spacio & Terra (GH, Sector-37 D), Mansions Park Prime (GH, Sector-66), Astaire Gardens (plotted, Sector-70 & 70A) and Amstoria (plotted, Sector-102 & 102A) developed by BPTP Limited.**

1. Background:

i. The Authority had constituted a committee of the following members vide order dated 06.07.2021/17.08.2021:

Sr. No.	Name	Designation in the Committee
1.	Manik Sonawane, IAS (Retired)	Chairman
2	RK Singh, CTP (Retired)	Member
3.	Laxmi Kant Saini (CA)	Member

The Committee has been mandated to do an in-depth analysis of the issues involved in various complaints filed by the allottees of the colonies/projects, cited in subject, before the Authority against BPTP limited, which are listed below:

a. Super area,
b. Cost escalation,
c. STP charges,
d. Electrification Charges,
e. Taxes viz GST and VAT etc.
f. Advance Maintenance Charges,
g. Car parking Charges,
h. Holding Charges,
i. Club membership Charges,
j. Preferential Location Charges,
k. Development charges and Utility connection charges,
l. EDC/IDC Charges,
m. Fire Fighting/power back-up charges.

ii. Shri Rakesh Kumar Agarwal, Senior General Manager, Finance and Accounts, Shri Sunil Kumar Jha, Senior Vice President (Architecture) on behalf of BPTP and Shri Vineet Umesh Gupta and Shri Hardeep Singh, the nominees of the allottees of Project Spacio and Park Generation respectively were nominated to assist the above said committee and attend the meeting called by the committee from time to time vide order 06.07.2021.

iii. Later, on request of the Committee vide order dated 13.09.2021, the Hon'ble Authority decided to include the nominees of the homebuyers of all the BPTP projects viz Park Terra, Amstoria, Astaire Gardens, Mansions Park Prime to enable the Committee to discuss and appreciate the issues raised by the resident/complainants of these licensed colonies and submit a comprehensive report. Accordingly, the following persons were nominated to attend the meetings of the Committee for discussion and resolution of the issues of their respective projects:

iv. In compliance with the order of the Authority, the Committee held meetings on 24.08.2021, 25.08.2021, 31.08.2021, 01.09.2021, 08.09.2021, 09.09.2021, 24.09.2021, 25.09.2021, 12.10.2021, and 13.10.2021. The issues discussed and the recommendations by the Committee are as follows:

2. Broad parameters adopted for making recommendations:

i. Several allottees have filed complaints before the Hon'ble Authority in the projects Park Generation, Spacio, Terra, Mansions Park Prime, Astaire gardens, and Amstoria, But, only the relevant contentions of the nominees, given in writing as well as raised orally during the course of meeting and reply to that filed by the respondent, contentions raised in their respective complaints and replies to that filed by the respondent and the flat buyer's agreements (BBA) executed with the respondent have been consulted for preparing this report.

ii. The scope of FBAs executed by the allottees of Park Generation, Spacio, Terra, Astaire gardens, and Amstoria has been followed without dwelling on its merits/demerits. The emphasis has been laid on to ascertain as to whether or not the issue raised/relief sought by the complainants fall within the ambit of the respective FBAs.

3. Discussion and Recommendations of the Committee on the Issues:

I. Group Housing Projects: Spacio, Park Generation & Terra (sector-37D)

i. **Overview of the project**: The respondent company has been granted licence bearing no. 83 of 2008 (23.814 acres) and additional licence no. bearing no. 94 of 2011(19.744 acres) for developing a group housing colony in sector-37D over an area admeasuring 43.558 acres. The total permissible FAR of the project is 304876.022 sq. m. allowed on site area measuring 43.0495 acres, but the sanctioned FAR is 299792.950 sq. m as per the revised building plans approved on 30.05.2012.

ii. The respondent has executed four sub-projects on the land namely Park Serene (Towers T1 to T7 & EWS), Park

Spacio (Towers T8 to T13 & EWS), Park Generation (Towers T14 to T19 & EWS) and Park Terra (Towers T20 to T25 & EWS). The total FAR consumed till date is around 250061.107 sq. m. and the remaining FAR Area is 49731.843 sq. m.

iii. The project 'Park Serene' stands fully developed availing FAR to the extent of 60144.014 sq. m. The Occupation Certificates of all the towers and EWS flats have been granted by the competent authority in this project on 10.07.2017 and 07.08.2017. The possession of the flats has already been delivered to the allottees of the project. The respondent company has also obtained occupation certificates from the competent authority for projects Park Spacio (FAR Area 74809.39 sq. m.) issued vide letter dated 30.07.2020 and 15.01.2021 and for Park Generation (FAR Area 54617.88 sq. m.) issued vide letter dated 09.10.2018 and 20.09.2019. The respondent company has offered possession of the flats to the respective allottees in these projects. The copies of the OCs are enclosed as **Annexure-1.**

iv. As regards the project 'Park Terra', the respondent company had applied for the grant of Occupation Certificate on 18.01.2021and the competent authority has considered the request in-principle for towers no. T20, 21, 24 & 25, as conveyed vide memo no. ZP-437-Vol.-III/2021/31083 dated 09/12/2021.

v. The meeting of the Committee with the nominees of allottees of the projects Park Spacio and Park Generation and the representatives of the respondent company was held on 24.08.2021.

vi. It would be appropriate to clarify here that a number of complaints have been filed before the Hon'ble Authority by the allottees of project Park Spacio and Park Generation. However, the Committee has referred the documents/papers available in the record of the Hon'ble Authority in the lead complaint no.373 of 2019 titled as Hardeep Singh and Another Vs. BPTP Ltd. and complaint no. 1228 of 2021 titled as Vineet Umesh Gupta and Another Vs. BPTP Ltd., statement given by them during the course of discussion, and the information/papers made available by the respondent company during the course of meeting/investigation. Hence, the recommendations made by the Committee would be applicable on the complaints, involving similar issues.

filed against the respondent company in the above-mentioned projects.

vii. The issues discussed and recommendations made by the committee are as follows:

A. Super area:

Complainants:

i. That 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 Spacio project, whereas the covered area of the unit remains the same. In case of Park Generation, the area of the unit has been increased from 1470 sq. ft. to 1521 sq. ft. As per the statement of accounts-cum-invoice attached with the letters of possession dated 27.01.2021 (Spacio) and dated 26.10.2019 (Park Generation), which are enclosed as **Annexure-2 & 3** respectively.

ii. That increase in the super areas is one of the major factors that has resulted in appreciable increase in the total cost of the units in the projects.

iii. That the respondent claims that the areas of the units have increased due to increase in the common areas at site during the course of construction, whereas no such increase in common areas has happened on the ground.

iv. That the respondent has increased the super areas of the units to extract extra money from the allottees.

In view of the above facts, the complainants submitted that the respondent may be directed to withdraw the demand raised on account of increase in the super area.

Respondent:

i. That the basic sale price and the charges mentioned in clause 2.1 of the FBAs **(Annexures-4 & 5)** are applicable on the super area in terms of the said clause. The term super area has been defined in the said agreements in its definition part at clause 1.35 in the agreement of Park Generation and clause 1.32 in Park Spacio, which is reproduced below:

"Super Area" shall be the sum of Covered Area of the Flat and its non-exclusive pro-rata share of Common Areas in the Colony including all elevation features/projections.

"The Flat if provided with usable open terrace(s) and balcony (ies), the area of such open terrace(s) and balcony (ies) shall also be included in the Super

Area of the Flat, however the Purchaser(s) shall not be entitled to cover such terrace(s) and balcony (ies) and shall use the same as open terrace(s) and balcony (ies) only and in no other manner whatsoever."

ii. The terms covered area and common areas used in the super area have also been defined in the FBAs at clause 1.13 in the definition part , which are reproduced below:

"Covered Area" shall mean the area enclosed by the periphery walls including area under walls columns and half the area of walls common with other premises, which form integral part of the FAR including balcony(ies), if any, internal shafts.

"Common Areas" shall mean all such features/ areas in the Colony, that the Purchaser(s) shall use by sharing with other occupants of the Colony including corridors passages, open spaces, atrium, common toilets, lifts, lift lobby, security, fire control room(s), electrical shafts, D.G. shafts, pressurization shafts, plumbing and fire shafts, staircases, mumties, lift machine rooms, water tanks, gate house, structure In addition, entire area in the basement including but not limited to electric substation, transformers, D.G set rooms, underground water, other storage tanks, pump rooms other than specific parking space/area allotted to the Purchaser(s), area for making provisions for rain water harvesting with respect to the Colony, area for making provision for the sewage treatment plant with respect to the Colony, maintenance and services rooms, fan rooms and circulation areas etc. and any other area in the Colony / building to be utilized for the purposes of common facilities and amenities, except as specifically excluded as per the terms of the Agreement, shall be counted towards Common Areas.

iii. That the respondent is entitled to increase the super area in terms of the clause 2.4 of the agreements, executed with the complainants/allottees of Park Generation and Spacio, which clearly mentions that:

"The Super area of the Flat shall be finally determined after completion of the construction of the colony and after accounting for changes, if any, on the date of handing over the physical possession. The final and confirmed super area will be incorporated in the Conveyance Deed."

iv. That total super area of the project Spacio at the time of launch was 88405.80 sq. m. or 951600 sq. ft., which increased to 93311 sq. m. or 1004398 sq. ft. after completion of the project. The increase in the super area has taken place due to increase in the specific area (Unit + Balcony Area) of the apartment and small increase and in the non-exclusive common areas during the course of construction. The

specific area of all the apartments was 7,65,534 sq. ft. at the time launch of the project that increased to 7,72,619 sq. ft. after the completion, registering an increase of 7,084 sq. ft. Similarly, the area under non-exclusive common areas has increased from 1,86,066 sq. ft. to 2,31,779 sq. ft. (45713.29 sq. ft.) in project Spacio. Consequently, saleable area/specific area factor, which was 1.2431 (9,51,600/7,65,534), increased to 1.30 (10,04,398/7,72.619), showing an increase of approximately 4.58%. The actual non-exclusive common area was distributed on all the apartments on pro-rata basis by multiplying the specific area of the apartment with the above-mentioned factor to has been work out its super areas. For example, the specific area (unit+ balcony area) of the apartment of Sh. Vineet Umesh Gupta is 1434.73 sq. ft. (1302.87+131.86) and its super area works out to 1865 sq. ft. (1434.73x1.30) by the respondent.

v. In case of Park Generation, the total super area of all the apartments was 7,05,000 sq. ft. at the time of launch of the project, which increased to 7,44,060 sq. ft. after completion of the project. The increase in the super area has happened due to an increase in the specific area (unit+ balcony area) of the apartments and as well as an increase in the non-exclusive common areas. The total specific area under the apartments was 5,67,242 sq. ft. when the project was launched, which increased to 5,80,001 sq. ft. after completion of the project, showing an increase of 12,759 sq. ft. . Similarly, the total area under non-exclusive common area increased from 1,37,759 sq. ft. to 1,64,059 sq. ft. registering an increase of 26,300 sq. ft. Resultantly, the saleable area/specific area factor increased from 1.2429 (7,05,000/5,67,242) to 1.2829 (7,44,060/5,80,001), showing an increase of 4%. The actual non-exclusive common area was distributed on all the apartments on pro-rata basis by multiplying the specific area of the apartment with the above-mentioned factor to work out its super area. For example, the actual specific area (unit+

balcony area) of the apartment of Sh. Harpreet Singh was 1,186.06 sq. ft.(1,027.96+158.10) and its super area has been works out to 1521 sq. ft. (1,186.06x1.2829) by the respondents.

Note: The term specific area used in the calculation by respondent is the same as the covered area defined in the agreement.

vi. The calculation details of the super area, specific area and common areas are enclosed at **Annexure-6** (Park Generation) and **Annexure-7** (Park Spacio). The revised approved building plans showing thereon the additional components of the common areas are also enclosed with the aforementioned Annexures

vii. In view of the above facts the respondent submitted that the increase in the super area is within the ambit of the agreements executed with the complainants is tenable and justified and same may be allowed.

Recommendations:

i. The details of the specific area (unit+balcony) and non-exclusive common areas, provided by the respondent company, have been examined by the Committee. The components of the non-exclusive common areas comprise ground floor core area, , stilt area, ENT Lobby, typical core area (excluding ground floor), toilet shafts area, chajja projections, lift machine room, overhead tank, entrance canopy, feature wall elevation, STP share, underground tank, gate canopy, HSD, fan room, guard room/meter room/feature wall and DG/electric sub-station , cooling towers, transformer room, pool balancing tank and non-parking & non driveway areas.

ii. It has been observed that area under the common area components has increased from 1,86,066 to 2,31,779 sq. ft. (45,713 sq. ft.) due to addition of extra components namely, chajja, feature wall elevation, underground tank, STP share, increase in the area of DG/electric sub-station, cooling towers / fan room and pool balancing tank in project Spapcio after completion of the project.

iii. In case of Park Generation, the area under common area components increased from 1,37,759 sq. ft. to 1,64,059 sq. ft. (26,300 sq. ft.) due to additional components namely DG/electric sub-station and increase in the non-parking/non-

drive areas in the basement/stilt inserted after completion of the project.

iv. As the complainants had expressed apprehension during discussion about the existence of additional common areas added to the super areas of the units, so it was decided to conduct a joint inspection for verification of the same at site. Accordingly, a joint inspection was done by the members of the Committee on 07.09.2021. Its report was reviewed on 08.09.2021. The following aspects emerged:

v. The respondent has added the following components at site, which have been designated as additional common areas that resulted in an increase in the super areas of the units:

a) Park Generation:	
i.) DG/ Electric Sub-Substation:	3304.00 sq. ft.
ii.) Non parking and non-driveway areas:	
a.) Basement:	14651 sq. ft.
b.) Stilt	8345 sq. ft.
Total	**26300 sq. ft.**
b) Spacio:	
i.) Feature Wall Elevation	6665.04 sq ft.
ii.) Fan Rooms and Cooling Towers:	2224.85 sq. ft.
iii.) Increase in the area of DG/ Electric Sub-Substation:	7171.58 sq. ft.
iv.) Pool Balancing Tank:	684.28 sq. ft.
v.) Underground Water Tank:	11980.33 sq. ft.
vi) Chajja	13818 sq. ft.
vii) STP share	3169.21 sq. ft.
Total	**45713.29 sq. ft.**

vi. The respondent has provided a Club with a swimming pool for the entire project for common use of the allottees of projects Spacio, Park Generation and Terra. The club and swimming are being constructed in the project area of Park Generation. The pool balancing tank is designed to keep the level of water constant in the swimming pool. The club does not form part of the common areas to be transferred to the RWA. Rather, it is to

be run by the respondent company or third party. Hence, inclusion of the area under pool balancing tank in the common areas is not justified.

vii. The respondent company has included even the feature wall elevation on terrace in the common areas. It is an architectural feature provided by the respondent company to improve aesthetics of the towers. Besides, this component does not find any mention in definition of the common areas given in the agreements. Hence, its inclusion in the common areas is not justified at all.

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:

a. (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. (1434.73x1.2905) 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 areas in terms of the enabling clause 2.4 of the agreements.

B. Cost Escalation:

One of the key issues is charging escalation costs on account of inflation in the cost of construction material and other items. On analysis of agreements of various projects, we found that in some projects the basic cost of construction was identified and specified in the builder-buyer agreements, and in a few projects, the basic cost of construction was not specified in the builder buyer agreements.

So we segregated the projects into two categories as follows:

1. The cost of Construction and the escalation formula specified in the agreement itself
2. The cost of Construction and the escalation formula did not provide in the agreement

Working of cost of escalation is as under :

I. A project where the cost of construction and the escalation formula specified in the agreement itself:

A. Name of the project: Park Generation, Sector 37 D, Gurugram- The lead case complaint No. 373 of 2019 Hardeep Singh & ANR. Versus BPTP Ltd was verified as under:

Relevant clause as per agreement/booking form regarding cost escalation:

In terms of the Clause mentioned in the booking form - "Clause no.40" & in terms of the agreement "Clause no 4.3 or 12.12" duly accepted and signed between the customer and the company, the cost escalation is to be borne by the customer. The aforesaid clauses are reproduced below for ready reference:

Booking form (Clause No: 35)

"That the basic sale value is escalation free but it is subject to revision/withdrawal, without notice at the sole discretion of the company, if there is any steep rise/increase in the prices in the raw materials like steel, cement, etc. or any other cost or any other charges, etc."

Builder Buyer Agreement (Clause No: 12.12)

"The Purchaser(s) understands and agrees that the sale consideration of the "Unit" comprises of the cost of construction rates applicable on the date of booking, amongst other components. The Purchaser(s) further recognizes that due to variation in the cost of construction i.e. cost of materials, labor, and project management cost, the actual cost of the "Unit" may experience escalation; and may thus vary. The final cost of construction shall be calculated at the stage of completion of the project, should the variance be equal to or less than 5%, of the cost of construction, ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. However, should the cost of construction, upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s), as the case may be, as per the actual calculation made by the Seller/Conforming Party. The variance in the cost of construction shall be calculated on the basis of the following formula:"

$\frac{\text{Rs. 2060 per sq.ft.}}{\text{Number of years (3)}} \times \frac{CL1+CL2+CL3}{CLSL} - \text{Present Cost of Construction}$
(Rs.2060/- per Sq.ft.)/(Number of Year (3)) x (CL1+CL2+CL3)/CLSL - Present Cost of Construction
Rs. 2060/-- per sq. feet= cost of construction as on date of booking as determined by the Seller/Confirming Party
CLSL= Cost Index of CPWD on August 2011, of the unit
CL1= Cost index of CPWD on (Date after one year) of the unit
CL2= Cost index of CPWD on (Date after two years) of the unit
CL3= Cost Index of CPWD on an offer of Possession of unit

On a plain reading of the above clause, the following key issues emerge to examine by the committee:

1. Ascertain the estimated cost of construction at the time of booking/at the time of the agreement, as the case may be;
2. Absorption of 5 % inflation by the developer;
3. Measurement of cost inflation based on CPWD or any other index;

4. Inflation benefits to be provided for the period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession;

So we evaluated each issue as follows:

1. **The First Issue is to decide the estimated cost of construction at the time of booking/at the time of agreement:**

   It was observed that in the lead case, the estimated cost of construction was specifically mentioned in the agreement as to the present cost of construction. However, it may possible that in a few of the cases, the cost of construction was not specified in the agreement. In case, where the estimated cost of construction is specified in the agreement itself then the cost is to consider the cost as per the agreement executed between the developer and buyer. So in the present case, the present cost of construction was Rs. 2060/- per sq. feet. Further, in the case where the cost of construction was not specified in the agreement then the calculation should be done according to the principle set for the real estate project where cost was not specified in the agreement like "Park Spacio".

2. **The second issue is to absorption of 5 % inflation cost:**

   The relevant clause no 12.12 of the said agreement is that the basic sale price is escalation-free except in the situation where the cost of construction shall be equal to or less than 5%, of the cost of construction ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. However, should the cost of construction upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s), as the case may be, as per actual calculation made by the Seller/Confirming Party.

   Accordingly, no escalation charges can be levied in case the variance is equal to or less than 5%, of the cost of construction, ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. It also means that escalation up to 5 % was already accounted for in the basic price charged from the buyers. In the above

context, 5% cost inflation is to be born by the promoter and the rest may be ascribed to purchasers.

3. **The third issue is identification and measurement of the cost inflation Index:**

In the agreement for calculating the variance in the cost of construction at the time of booking and at the time of completion of the project a formula has been mentioned which will be the basis for calculating the cost of escalation. The formula specified cost index of CPWD and the cost index of CPWD which is declared on a six-monthly basis is appropriate and there cannot be any dispute about it. Even in cases, where no such formula has been prescribed the CPWD index for calculating the variation in the cost of construction will be a good guide.

4. **The fourth issue is related to the Inflation benefit period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession.**

The possession clause 3.1 of the agreement is as under:

"3.1 Subject of Force Majeure, as defined in clause 10 and further subject to the purchaser having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Conforming Party, the Seller/Conforming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of execution of Flat Buyers Agreement ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Conforming Party shall additionally be entitled to a period of 180 days ("Grace period") after the expiry of the said Commitment Period to allow for finishing work and filling and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the project "Park Generations".

It was agreed that the possession of the apartment will be given within 36 months from the date of execution of the Flat Buyers Agreement ("Commitment Period"). A further grace period of 180 days was agreed to apply to obtain an occupation certificate. As the builder failed to apply the OC within 180 days after the expiry of the commitment period,

accordingly, is not entitled to the benefit of the grace period. So as per the above clause, the possession of the apartment should have been delivered within 36 months from the date of execution of the contract.

The company offered maximum possession in the year 2019 and with a delay of almost 3 years.

The question that arises before the committee is whether the cost escalation should be allowed up to the deemed date of possession i.e., 36 months from the date of execution of a contract i.e. 17.01.2016, or up to the actual date of the offer of possession i.e., 2019. As most of the complainants paid a major part of the sale consideration and there was no default on the part of the complainant in making payment to the promoter. The project has been delayed by over 3 years for no fault on the part of the complainant.

It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing/date specified in the flat buyer agreement i.e. Aug 2011 up to the deemed date of delivery of possession i.e. 17.01.2016, or up to the grace period i.e. 17.07.2016. No escalation in cost can be allowed after 17.01.2016 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant.

So, on a combined analysis of all these points, the cost of inflation is to be allowed to the company as per the following calculation.

Sr. No.	Particular	Amount (Rs. In Sq. Feet)
A.	Cost of Construction as of Aug 2011 (As per Agreement)	2060
B.	Percentage Cost of escalation to be absorbed by the developer	5%
C.	Cost of Escalation to be observed by the developer (In Rs) (A*B)	103
D.	Average CL at the deemed date of possession as per formula specified in Agreement	169.27

	(161+170+176.80/3)	
E.	BASE CLSA at the time of booking/agreement as on August 2011 as given in the builder buyer agreement	149
F.	The difference in the average CL at the time of possession and base CLSA (E-D)	20.27
G.	% Increase in the cost up to the deemed date of possession (F/E)	13.60%
H.	Cost to be observed by the builder in percentage (H) (H * E)	5%
I.	Net increase in the cost in %	8.60%
J.	Cost Escalation demanded by Developer in per sq. feet	358.73
K.	Escalation Allowed Per sq. feet (A*I)	177.20

II. A project where the cost of construction and the escalation formula did not specify in the agreement itself:

A. Name of the project: Park Spacio in Sector 37 D Gurugram: The lead case complaint No. 1228 of 2020 Vineet Umesh Gupta & Mrs. Rakesh Vineet Gupta Versus BPTP Ltd was verified as under:

Relevant Clause as per Agreement:

In terms of the Clause mentioned in the booking form - "Clause no. 35" & in terms of the agreement "Clause no 12.11" duly accepted and signed between the customer and the company, the cost escalation is to be borne by the customer. The aforesaid clauses are reproduced below for ready reference:

Booking form (Clause No: 35)

"That the basic sale value is escalation free but it is subject to revision/withdrawal, without notice at the sole discretion of the company, if there is any steep rise/increase in the prices in the raw materials like steel, cement, etc. or any other cost or any other charges, etc."

Builder Buyer Agreement (Clause No: 12.11)

"that 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.27500 is- per ton and prices of other construction materials have been taken as per index price as of 1.9.2009. The company is fully authorized to revise the cost of construction materials, based on market conditions. The reasons, if any, shall be intimated to the purchaser(s) at the time of possessions. The purchaser(s) agrees and undertakes to unconditionally accept the price revision and pay the escalated amount without any objection or challenge whatsoever."

On a plain reading of the above clause, the following key issues emerge to examine by the committee:

1. Ascertain the estimated cost of construction at the time of booking/at the time of the agreement, as the case may be;
2. Absorption of inflation due to increase beyond 10% in the cost of steel, cement, and other construction materials by the developer;
3. Measurement of cost inflation based on Cost of steel (as base rate provided in the agreement itself)/ CPWD Index/ Construction Industries Development Corporation (CIDC) Index/Income tax Index or some other method;
4. Inflation benefits to be provided for the period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession;

1. **The First Issue is to decide the estimated cost of construction at the time of booking/at the time of agreement:**

   It was observed that in a few cases, the estimated cost of construction was specifically mentioned in the agreement, however, in most of the cases, the cost was not specified in the agreement. In case, where the estimated cost of construction is specified then the cost is to consider the cost as per the agreement executed between the developer and buyer.

   In the agreement, the developer did not specify the estimated cost of construction at the time of booking or at the time of execution of the contract. The relevant portion of the

agreement says "The company is fully authorized to revise the cost of construction materials, based on market conditions. The reasons, if any, shall be intimated to the purchaser(s) at the time of possessions."

As per Annexure- 'E'- Note on Cost of escalation charge of the possession letter dated 27.01.2021 the developer provided one calculation as per annexure 'F' of the letter.

In the said letter of possession, the developer identified that the total estimated cost of construction for the project was 194.32 crore and the total area of construction for the project was 10.95 lacs sq. feet.

So, a simple calculation of the cost of construction per sq. feet was as follows:

(194.32Cr/10.95 lacs sq. feet) = 1774.62 sq. feet

The above figure of project cost and total construction area of the project have been taken from the annexures attached with the offer of possession at **Annexures-2 & 3**

2. **The second issue is to absorption of 10% inflation cost:**

The relevant clause no 12.11 of the said agreement is that the basic sale price is escalation-free except in the situation where the cost of steel, cement, and other construction materials increases beyond 10%. Accordingly, no escalation charges can be levied in case the increase in the cost of these materials is less than 10%. It also means that escalation up to 10 % of the construction materials was already accounted for in the basic price charged from the buyers. In the above context, 10% increasing cost of construction materials is to be absorbed by the developer.

3. **The third issue is identification and measurement of cost inflation based on Cost of steel (as base rate provided in the agreement itself)/ CPWD Index/ Construction Industries Development Corporation (CIDC) Index/Income tax Index:**

Though the base rate of steel as of 01.09.2009 was provided in agreement the prices of steel, cement, and other construction materials fluctuate widely. It will be a very difficult accounting exercise to work out the actual escalation

in the costs of these materials during the aforesaid period up to the deemed date of offering possession. Necessarily, therefore, some standard index will have to be followed. The dispute is whether CPWD or CIDC table/Income Tax Table should be adopted. CPWD is a public works department of the Central Government. It is presumed that they factor in all facts and circumstances while revising the cost index of various materials. Similarly, while deciding the cost inflation index the income tax department considers the overall inflation basis and not the construction industry-specific cost. therefore, the CPWD index table should be followed to calculate the escalation in cost of construction between the period of flat buyer agreement and the deemed date of possession.

The CPWD which is declared on a six-monthly basis is appropriate and there cannot be any dispute about it. Even in cases, where no such formula has been prescribed the CPWD index for calculating the variation in the cost of construction will be a good guide.

4. **The fourth issue is related to the Inflation benefit period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession.**

The possession clause 3.1 of the agreement is as under:

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 hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace 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. The Seller/Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to the handling over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and

complete documentary formalities and take physical possession of the Flat. In case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of the Flat.

It was agreed that the possession of the apartment will be given within 36 months. A further grace period of 180 days was agreed to apply to obtain an occupation certificate. As the builder failed to apply the OC within 180 days after the expiry of the commitment period, accordingly, is not entitled to the benefit of the grace period. So as per the above clause, the possession of the apartment should have been delivered within 36 months from the date of execution of the contract.

The company offered maximum possession in the year 2017 and with a delay of almost 4 years.

The question that arises before the committee is whether the cost escalation should be allowed up to the deemed date of possession i.e. 36 months from the date of execution of a contract or up to the actual date of the offer of possession i.e. 2017. As most of the complainants paid a major part of the sale consideration and there was no default on the part of the complainant in making payment to the promoter. The project has been delayed by over 3 years for no fault on the part of the complainant. It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing the flat buyer agreement i.e. 07.09.2011 up to the deemed date of delivery of possession after the 2011 grace period i.e. 06.09.2014 No escalation in cost can be allowed after 06.09.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant.

So, on a combined analysis of all these points, the cost of inflation is to be allowed to the company as per the following calculation.

Cost of Escalation as calculated by the company: The company consider the estimated cost of construction as certified by the chartered accountant and thereafter apply various indexation and consider the same as follows:

The company calculated the cost of construction and cost of escalation as exhibited in below table

Description	FY(10-11)	FY(11-12)	FY(12-13)	FY(13-14)	TOTAL
Construction Expenditure (COC) (As per balance sheets up to FY(13-14)) (A)	10,26,38,348	37,35,91,400	21,89,99,983	10,06,23,330	79,58,53,060
Remaining construction expenditure to be incurred (B)	-	-	46,02,20,294	69,03,30,442	1,15,05,50,736
Total Construction budget (A+B)	10,26,38,348	37,35,91,400	67,92,20,277	79,09,53,771	1,94,64,03,796
Construction materials as per norms of CPWD 75% of (A+B)	7,69,78,761	28,01,93,550	50,94,15,208	59,32,15,329	1,45,98,02,847
CLSL CPWD Index as on 01.09.2009	113	113	113	113	
CL1 (Apr)	136	149	161	170.02	
CL2 (Oct)	139	151	170	170.02	
Avg CL of FY ((CL1+CL2)/2))	137.5	150	165.5	170.02	
Total escalation %	21.68%	32.74%	46.46%	50.46%	
Escalation amount on COC	1,66,90,085	9,17,44,791	23,66,75,207	29,93,37,505	64,44,47,588
Cost Escalation (Psft.)					588

On perusal of the document/calculation table submitted by the promoter, it was observed that the promoter cited some figures and the basis of these figures was not provided in offer of possession. To have more clarity and to enable the committee to take a holistic view of the matter, the promoter was directed to give details of the above calculation.

A specific inquiry was made regarding the identification cost incurred and cost to be incurred in the above-said table. In response to this, the promoter had clarified that:

A. CONSTRUCTION EXPENDITURE (COC) (A) was the actual audited cost incurred by the company on said project. The Promoter further

submitted that these costs are identified according to the percentage of completion method (POCM).

B. The remaining construction expenditure to be incurred (B) is the cost to be incurred by the promoter for balance work.

C. To calculate the cost escalation the company has used the indexes published by CPWD. In terms of the agreement, we have calculated escalation only on the cost of steel, cement, and other construction materials. The proportion for the steel, cement, and other construction materials vs the labor cost has been detailed as per the CPWD index, from CPWD works manual, section 33.

D. In terms of the Agreement signed between the company and the customer, the CPWD base index of 2009 has been applied for calculating the cost escalation on the total budgeted cost of the project till March 2014.

E. The total enhanced cost of construction has been apportioned to the total super area of the project.

F. It was clarified that the figures in Row 1 was ectual expenditures and Row no. 2 are as per the planned estimated expenditure to be made from the year F.Y. 10-11 to F.Y. 13-14 and accordingly total estimated project cost as of F.Y. 10-11 was 194.64 Crore. The CA certificate is enclosed at **Annexure-8**

On analysis of the above submission, the following points were emerging:

1. For calculation of the estimated cost of construction, the company considered the actual cost for the year 2010-11 to 2013-14, and thereafter CPWD Index was applied
2. 10% inflation to be absorbed by the company is not absorbed
3. The company considered an actual expenditure for the year 2010 to 2014 that already included the escalated value of construction materials. So, to ascertain the estimated cost of construction at the time of booking/ execution we need to do back-calculation/ re-work the actual cost to the estimated cost.
4. Indexation benefit is provided for 36 months i.e., committed date of delivery of 36 months.

Based on the above parameters we did a recalculation as exhibited in the below table:

Rework Calculation by the committee (CPWD Index)					
Description	FY(10-11)	FY(11-12)	FY(12-13)	FY(13-14)	TOTAL

CONSTRUCTION EXPENDITURE (COC) (As per balance sheets up to FY(13-14))	10,26,38,348	37,35,91,400	21,89,99,983	10,06,23,330	79,58,53,060
Percentage escalation during the year from 01.09.2009 (escalation already absorbed in the expenditure incurred as per balance sheet)	21.68% (Rs. 18288287)	32.74% (Rs. 92152545)	46.46% (Rs. 69471294)	50.46%(Rs. 33746279)	(Rs. 213658405)
Back-calculated to ascertain the estimated cost (A)	8,43,50,061	28,14,38,855	14,95,28,689	6,68,77,051	58,21,94,656
Remaining construction expenditure to be incurred (B)	0	0	46,02,20,294	69,03,30,442	1,15,05,50,736
Total Construction budget (A+B)	8,43,50,061	28,14,38,855	60,97,48,983	75,72,07,493	1,73,27,45,392
Construction materials as per norms of CPWD 75% of (A+B)	6,32,62,545	21,10,79,141	45,73,11,737	56,79,05,620	1,29,95,59,044
CLSL CPWD Index as on 01.09.2009	113	113	113	113	
CLSL CPWD Index as after absorption of 10 % inflation	124.3	124.3	124.3	124.3	
CL1 (Apr)	136	149	161	170	
CL2 (Oct)	139	151	170		
Avg CL of FY ((CL1+CL2)/2))	137.5	150	165.5	170	
Total escalation %	10.62%	20.68%	33.15%	36.77%	
Escalation amount on COC	67,18,146	4,36,42,268	15,15,78,790	20,87,95,550	41,07,34,754
Total Super Area					10,95,984
Cost Escalation (Psft.)					374.76

As per the above calculation, the escalation cost comes down to 374.76 per sq. feet from the demanded cost of 588 per sq. feet.

Further, as per the above calculation, the cost of construction has come to 173.27 crores and as per RERA filling the promoter submitted the initial estimated cost of construction is 172 cores so the same seems to be reconciled and reasonable.

Conclusion:

In view of the of 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.

CA Certificate for cost escalation working of Park Spacio and Park Generation is annexed as Annexure-8.

C. STP Charges and Electric Connection (ECC) + Fire Fighting (FF)+Power-Backup Charges (PBIC)

Complainants:

i. The nominee of Spacio submitted that the respondent company has installed a sewage treatment plant (STP) for the entire licensed colony. However, the cost of installation of STP has been charged differently from the allottees of Spacio and Park Generation as per statement of accounts-cum-invoice attached with the respective possession letter. He cited the example of nominee of Park Generation from whom the respondent has charged a lump sum amount of INR 13,460.85 towards STP charges, which comes to INR 8.85 per sq. ft., whereas in his case the respondent has clubbed electrification with STP charges raising a hefty demand of INR 1,49,200.00, which comes to INR 80 per sq. ft.

ii. The nominee of Spacio further stated that similar discrimination has been done while raising the demand on account of ECC+FFC+PBIC. He pointed out that the demand on account of FFC & PBIC amounting to INR 1, 86,500.00 i.e. @ Rs 100 per sq. ft. has been raised in the statement of accounts-cum-invoice attached with the letters of possession issued in favour of the allottees of Spacio, whereas the allottees of Park Generation have been asked to pay for ECC+FFC+PBIC @INR 100 per sq. ft. in terms of the provisions of clause 2.1 (f) of the FBAs. This way the allottees of Spacio have been charged twice on account of electrical infrastructure.

In view of the above, he requested that 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.

and be directed to effect necessary correction in the statements of account-cum-invoice issued in favour of allottees of Spacio by deleting the term electrification clubbed with STP Charges and clubbing the term ECC with FFC+PBIC.

Respondent: The respondent stated that the electrification charges have been levied in terms the clause 2.3 of FBAs, which is reproduced below:

"The purchaser(s) shall also be liable to make the payment, if applicable, in respect of (a) electrification charges (including pro-rata cost of purchasing and installing transformers, (b) cost of installing sewage treatment plant/ effluent treatment plant/ pollution control devise, and (c) additional Firefighting charges if any or any other facilities, services, additions, as may be required or specified by the Authority."

The respondent further informed that somehow the electrification charges were not included in the statement of accounts-cum-invoice attached with the letter of possession issued in favor of the allottees of Park Generation. The demand in respect of this item shall be raised separately for recovering the electrification charges from them in terms of provisions of clause 2.3 of the FBA. The term ECC has been missed out inadvertently in the statements of account-cum-invoice conveyed to the allottees of Spacio and will be rectified by clubbing it with FFC+PBIC in terms clause 2.1 (f).

Recommendations:

i. 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 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:** After deliberation, it was agreed upon that the respondent 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 integral part of the units. The Committee examined the issue in terms of the provisions of FBAs and observed that the term car parking charges (CPC) has been defined at clause 1.8 in the FBA, which is reproduced below:

"the charges to be paid by the purchaser(s) to the seller for the exclusive rights of usage of covered/open car parking spaces to be allotted to the Purchaser(s) as agreed to be associated with the Flat by the Seller subject to the terms of the agreement.".

Further, the clause 2.7 of the FBAs mentions that the car parking spaces, as may be allotted, shall be part of the flat for his exclusive use and the same shall not have an independent entity and cannot be detached or transferred or alienated or any third party rights can be created, other than when transferred along with the flat.

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. The Hon'ble Authority may kindly issue directions accordingly.

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 commercial basis. Hence, they should not be forced to pay for this facility as CMC and requested that the club membership be made optional. 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 allotee in this regard with condition that he shall abide by the above proviso.

H. **Preferential location charges:** The contention of the complainant was limited to the extent that it may be ensured that the PLCs have been levied by the respondent as prescribed in the FBAs. They did not point out any specific case where the respondent has demanded PLCs beyond the scope of the FBAs. 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 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 demand on this account in future. 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 demand in future.

J. **Development charges and Utility connection charges:** As the issue has not been highlighted by the complainants, the same has not been dealt with.

II. **Terra (GH, Sector-37D)**

The nominee/complainant, Ashok Aggarwal has been allotted three apartments in the Terra project by the respondent company. He attended the meeting of the committee held on 12.10.2021. The representatives of the respondent company were also present in the meeting. The issues discussed therein and the recommendations thereon by the Committee are as follows:

Complainant:

i. That he has been allotted three apartments as per the details given below:

Unit No.	Total sale consideration (INR)	Amount paid (INR)
T23-803	1,32,06,331	1,17,37,467 (89%)
T23-703	1,32,06,331	99,17,874 (75%)
T23-704	1,28,91,646	1,03,13,317 (80%)

ii. That the developer was to handover the possession of the apartment by 09.08.2016, including the grace period of 180 days. However, on his visit to the site, he found that even 40% of the work has not yet been completed despite the fact that he had made payment between 75-89 % for all the three units. On instruction form the bank, he requested the respondent to send photographs of the construction. But the respondent did not pay any heed to his repeated requests. Consequently, the bank stopped releasing further payment.

iii. That the respondent with wrongful and ill-intention sent a cancellation letter in February 2020. He sent a letter of request to the respondent seeking recall of the cancellation, but the respondent did not reply to the same.

iv. That the respondent has failed to complete the construction of the project even after lapse of 5 years from the due date of delivery of possession.

v. That the respondent did not obtain the occupation certificate and environmental clearance from the Competent Authorities.

vi. The registration of the project has also expired.

Relief Sought:

a. The unilateral termination/cancellation letter for the units may be set aside being arbitrary and against the provisions of law.

b. The date of delivery of possession maybe fixed with reference to the statutory clearances and permissions.

c. The respondent be directed to levy car parking charges, development charges, preferential location charges (PLC), electrification charges, club membership charges, cost escalation, GST & VAT lawfully.

d. The respondent may be directed to produce all statutory clearances, for e.g., Fire NOC, environmental clearances, occupation certificate, HARERA Registration and permission from CGWA for withdrawal of ground water.

Respondent:

a. Withdrawal of Termination Letter:

i. That the issue does not figure in the list of 13 issues to be decided by the Ld. Committee. Hence, the complainant is not entitled to raise this issue before the Ld. Committee.

ii. That the respondent company has extensively replied to this issue in its written statement, which is pending adjudication before the Hon'ble Authority. Hence, the complainant may be asked to await the final decision of the Hon'ble Authority.

b. Fixing of date of delivery of possession: The Ld. Committee has been constituted to discuss and resolve 13 issues framed by the Hon'ble Authority. This issue does not figure in the list of 13 issues to be decided by the Ld. Committee. Hence, the complainant is not entitled to raise this issue before the Ld. Committee.

c. Car parking charges, development charges, PLC charges, electrification charges, club membership charges, cost escalation, GST & VAT:

i. **Development Charges:** The development charges have been levied in terms of the provisions of clause 1.11 of FBA which is reproduced below:

"1.11 of FBA - "Development Charges" or "DC" shall mean the amount charged by the Seller/Confirming Party from the Purchaser(s) towards carrying out the developmental works inside or around the GH, including but not limited to the payment of the following:

a. (i) External Development Charges (EDC) and infrastructure Development Charges (IDC) as conveyed and/or demanded by the HUDA, DTCP or the Government of Haryana and any increase thereof, retrospectively or prospectively,

(ii) Any interest paid and/or payable thereon to the concerned Authorities including any increase, retrospectively or prospectively,

b (i) *Infrastructure Augmentation Charge (IAC) as conveyed and/or demanded by the HUDA, DTCP or the Government of Haryana including any increase thereof, retrospectively or prospectively,*

(ii) *Any interest paid and/or payable thereon to the concerned Authorities including any increase, retrospectively or prospectively.*

c. *The cost of such other development works as may be undertaken by the Seller/Confirming Party within or around the GH that are not charged specifically elsewhere.*

d. *Cost incurred by the Seller/Confirming Party on the capital invested in making the payment of any of the Development Charges. Such cost shall be determined at the rate of (SBIPLR + 5%) subject to upper ceiling of 18%."*

Further, the clause 3.1(b) of FBA prescribes development charges at the rate of INR 462/- per square feet calculated on super built-up area. The complainant has already paid the development charges in terms of the agreement. No additional demand shall be raised on the account of DC, provided these are not enhanced by the Competent Authority in future.

ii. **Car Parking Charges:** That the respondent Company and the complainant both are bound by the terms and conditions of the FBA. The car parking allotment charges have been levied in terms of the clause 3.1 (d) of the duly executed Flat Buyer's Agreement. As per this clause, the allottee is to pay charges at the following rates:

a) *Open Car Parking @ INR250,000/- per bay.*

b) *Covered Car Parking @ INR350,000/- per bay"*

No additional demand has been raised by the respondent on account of car parking allotment charges. Hence, the concern of the complainant is unfounded and not maintainable.

iii. **Preferential Location Charges:** That the respondent Company and the complainant both are bound by the terms and conditions of the FBA. The term PLC has been defined under clause 1.31 and clause 3.1 (c) prescribes the amount of PLC to be levied ,which are reproduced below:

"1.31of the FBA "Preferential Location Charges" or "PLC" shall mean the charges payable by the Purchaser(s), calculated on Super Built-up Area, in

case the unit allotted to the Purchaser(s) has a locational advantage. There can be more than one PLC charges applicable to a Unit."

"Clause 3.1(c) of FBA - Preferential Location Charge ("PLC"), all units will attract one or more PLC, as applicable, due to their locational advantage, as per the table below. However, the total PLC for a Unit shall not exceed 12% of BSP.

Preferential Location Charges (PLC's) on BSP

Corner - 7%
Corner + Club or Park Facing - 10%
Park Facing: 7%
Ground Floor - 5%
First Floor 4%
Second / Third Floor 3%"

The PLCs have been levied strictly in accordance with the provisions of the clauses referred to above. As regards the nominee, he has already deposited an amount of INR 734,265/- towards PLC and no additional demand has ever been raised by the respondent company. Hence, contention of the complainant is not maintainable.

v. **GST/VAT:**

Major concerns of complainants:

Based on the complaints filed with the authority and representation before the committee, we sort out the key contention of the complainant as under:

1. GST: The GST came into force in the year 2017, therefore, it is a fresh tax. The possession of the apartment was supposed to be delivered before implantation of GST, therefore, the tax which has come into existence after the deemed date of delivery should not be levied being unjustified. There is no second thought to the fact that the delivery of the apartment has been delayed by more than 2 years. Had it been delivered by the due date or even with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is a wrongful act on the part of the developer who is not delivering the project in time due to which the additional tax has become payable.

2. HVAT/Service Tax: As per provisions under rule 49/49A of HVAT as well as under the corresponding provision of GST also, wherever the Govt. has allowed composition tax to a dealer, it debars it from charging that tax from its customers. Thus, to conclude, looking into the text of the amnesty scheme and intent of the legislature, it can be argued that the developer cannot charge the HVAT paid as per the said amnesty from its customers. It is prayed that the Respondent may be ordered to take the opinion of HVAT Tax experts and communicate to the complainants along with detailed justification thereof.

So, according to the argument of the complaints, the complainant was liable neither to payment of goods & service tax (GST) nor to payment of Haryana Value Added Tax(HVAT)/Service Tax.

The main questions which were arises for the consideration of the committee were whether:

a. the respondent is justified in demanding GST, VAT, and service tax?

b. If applicable, What is the rate of HVAT, GST, and Service Tax to be charged to customers?

These two questions are interconnected and substantially related to one matter of chargeability of taxation on 'ongoing' real estate projects. It is necessary, perhaps, to start with the relevant clauses of the builder-buyers agreement, concerning which the above questions have to be answered.

Relevant Clause as per Agreement:

Relevant clauses of the Agreement for the purchase of flat are extracted hereunder for easy reference as under:

clause 9: Statutory Taxes, Maintenance charges, etc.

"9.1 The Purchaser(s) shall from the date of execution of this Agreement, always be responsible and liable for the payment of Statutory Dues as may be levied on the said Colony/Land in the share proportionate to the Built-Up Area of the said Floor. In case any tax, charge, cess, etc. are levied after execution of the Sale/Conveyance Deed, the same shall be payable by the Purchaser(s) on a pro-rata basis, as determined by the Seller/ Confirming Party. All such amount shall be payable on demand, as the case may be, either to the Seller/Confirming Party or its designated/nominated Maintenance Service Provider to provide maintenance/ administration services in the said Colony upon completion, as mentioned in this Agreement including clause 9.4 hereinbelow."

clause 2.1. Statutory dues:

"Statutory dues" shall mean and include all, but not limited to, municipal taxes, property tax, infrastructure development tax/charges, VAT, service tax, any fresh incidence of tax and any other statutory charges, etc. to be levied by any Authority, including any enhancement of such taxes or dues by the State Government or the Authority, even if they are retrospective in effect as may be levied on the colony or the Land."

(Clause in BPTP Amnstoria, and similar clauses exist in all projects so not reproduced for the sake of duplication)

Contention of Promoter

As per the relevant clause of a builder-buyer agreement, the allottee has agreed to pay all the Government rates, the tax applicable on the date of agreement as well as agreed that in case any tax, charge, cess, etc. is levied after execution of the sale/conveyance deed the same shall be payable by the allottee.

The allottee was liable to pay an additional price proportionate to the share in the taxes which are payable by the company by way of value-added tax, sales taxes (Central and State), works contract, service tax, GST, education cess, or any other taxes by whatever name called in connection with the construction of the residential complex and the property of the complex. It is clear from this that all taxes including the tax in respect of the land area of which FAR is used and apartments are constructed are to be borne by the allottees jointly in proportion to the super area purchased by them. The company is not to bear the burden of any State Tax or Central Tax in respect of the Group Housing complex.

Analysis of Tax Structure

In the pre- Goods and Services tax ('GST') regime, the developer and the buyer, both the parties had to deal with issues emerging from a multitude of erstwhile taxes such as VAT, WCT Central Excise, Entry Tax, Local Body Taxes, Octroi, Service Tax, etc. Further, state-specific rates, the concept of deemed sales, different valuations for VAT, different schemes for payment of tax, etc. made contributions to the challenges faced by the real estate sector.

Before the introduction of GST, Central Government used to levy excise duty at the rate of 12.5% on most of the items required for construction activities. At the same time, State Governments used to charge value-added tax ('VAT') in the range of 5% to 14.5% on the same activities. The real issue was the taxes paid in the form of Excise and VAT on the construction items was not freely available as an input tax credit against service tax (4.5%) and State-Specific VAT (1.05% or 5% or 12.5 % as the case may be) levied on the under-construction flat sold to the buyers.

Similarly, for the part of the services, a developer paying Service Tax under Construction of Complex Services, while availing abatement under Notification No. 26/2012-ST, dated 20-6-2012, was allowed to avail cenvat credit of service tax and cesses paid on input services. The liability under Construction of Complex Services arose, only when a unit was agreed to be sold against receipt of some payment before receipt of the completion certificate. In other words, units sold after receipt of the completion certificate were treated as amounting to the sale of immovable property and not charged to Service Tax.

Post-implementation of GST from 1 July 2017, there has been a radical change in the applicability of Indirect Taxes on the Real Estate Sector. From 1 July 2017 to 31 March 2019, major relief was provided to the developers by not only allowing Input tax credit but also by providing a single levy i.e. GST at the effective rate of 12% for residential and commercial projects and 8% for affordable housing projects.

Pre & Post GST Regime

The GST came into effect as on 01.07.2017, the construction of residential complexes or a part thereof was covered under the taxable service as notified under chapter 99 of the Service Tax Act. The Buyers Agreement between builder & buyer provides government charges and taxes including but not limited to Service Tax, whether levied now or in future as well any retrospective Tax to the account of the Buyer. So we analyze the position of taxation for pre-GST as well as post-GST.

Pre GST Regime:

I. **Service Tax :**

Construction of the residential complex was brought under service tax w.e.f. 01.06.2005. Doubts have arisen regarding the applicability of service tax in a case where developer/builder/promoter agrees, with the ultimate owner for selling a dwelling unit in a residential complex at any stage of construction (or even before that) and who makes construction linked payment.

The 'Construction of Complex' service has been defined under Section 65 (105)(zzzh) of the Finance Act as "any service provided or to be provided to any person, by any other person, concerning the construction of a complex". The 'Construction of Complex' includes the construction of a 'new residential complex'. For this purpose, 'residential complex' means any complex of a building or buildings, having more than twelve residential units. A complex constructed by a person directly engaging any other person for designing or planning of the layout, and

the construction of such complex intended for personal use as a residence by such person has been excluded from the ambit of service tax.

The department clarified that services provided by the Builders/ Developers are not taxable before 01st July 2010. It is taxable from 1st July 2010 onwards as per CBEC Circular No. 108/02/2009-ST. further CBEC by way of clarification vide Circular No. 108/02/2009-ST dated 29.01.2009 r/w Circular No. 151/2/2012-ST dated 10.02.2012, again have clarified that for the period before 01.06.2010, construction (residential) provided by builder/developer will not be taxable.

Rate of Service Tax:

This central government has provided abatement to the construction of complex, building, civil structure or a part thereof as exhibited in the below table.

The effective rate of service tax on construction of a complex, building, civil structure, etc

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%

*(i) for a residential unit having carpet area up to 2000 square feet or where the amount charged is less than rupees one crore: abatement 75%

*(ii) for other: abatement 70%

*(iii) for calculation purposes we considered 70% abatement in case of the flat falling in the area up to 2000 sq. feet and up to 1 crore the abatement should be 75%

So from the above discussion, it's clear that service tax was applicable on the under-construction property as per the tax rate specified in the above table and the same was required to be recovered from the allottee and needed to be deposited with the revenue authority.

II. Haryana VAT (HVAT)

The Value Added Tax (VAT) thrust on builders and developers gained drastic momentum post the rulings of Hon'ble Supreme Court in L&T Limited v. State of Karnataka [Civil Appeal No.8672 of 2013 (Larger bench) which in principle accepts the law laid down in the earlier judgment in case of K. Raheja case (2005) 5 SCC 162 and lays few essential laws as under: -

a) Any agreement entered into by the builder/promoter before the completion of construction tantamount to works contract and hence, liable to Value Added Tax (VAT)/ sales tax.

b) When an agreement is entered into between the promoter/developer and the flat purchaser to construct a flat and eventually sell the flat with the fraction of land, it is obvious that such transaction involves the activity of construction in as much as it is only when the flat is constructed then it can be conveyed. The said activity will be covered by the term "works contract". The term "works contract" is nothing but a contract in which one of the parties is obliged to undertake or to execute works. Such activity of construction has all the characteristics or elements of a works contract.

c) In a tripartite agreement between the owner of the land, the developer, and the flat purchaser, there is nothing wrong if the transaction is treated as a composite contract comprising of both a works contract and a transfer of immovable property and levy sales tax on the value of the material involved in the execution of the works contract.

Relevant Definition:

'Works contract', as per Haryana Value Added Tax (HVAT) Act, 2003, includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication, installation, fitting out,

improvement, repair or commissioning of any moveable or immovable property.

HVAT Act, 2003 defines 'Contractor' as any person who executes either himself or through a sub-contractor a works contract. A contractor is to get himself registered under the HVAT Act either as a dealer under Section 11 or lumpsum dealer under Section 9 of the Act.

Computation of VAT Liability

According to the above principle, Haryana VAT law provides two methods for computation of the VAT liability on work contracts:

1) Normal Provisions

2) Composition Scheme

So we discuss the computation of tax liability under both methods:

I. Computation under normal provisions: As per 25 rule provides that in case of turnover arising out of work contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract and shall exclude the following:

   (i) the charges towards labor, services, and other like charges;

   (ii) the charges towards cost of land, other charges relatable to land, if any, paid to the Government or its agency, subject to the dealer maintaining proper records such as invoice, voucher, challan, or any other document evidencing payment of above-referred charges to the satisfaction of the Taxing Authority.

Rate of Deduction:

The developer opting for normal provision has two options for deduction as specified in rule 25 of HVAT as follows :

Actual Expense Method: under this method, the deduction of Labour & service charges is available on an actual basis. The land deduction is also available.

Standard Deduction Method: under this method standard deduction of a specified % towards land and labor cost is available. In case the cost of land is not ascertainable, then the same shall be calculated @ 40% of the total value of the contract, in the case of commercial construction and 25% in other cases.

However, in case the books are not maintained, a standard deduction of 25% is allowed in place of deducing the actual values of the service portion, after deducting the cost of land.

Pro-rata:

If only a part of the total area to be constructed is being transferred, the charges towards the cost of land shall be calculated on a prorated basis through the following formula: Proportionate super area multiplied by Value of land as determined in this sub-rule divided by Total plot area multiplied by Floor Area Ratio

Rate of tax to be applied

As per section 7 of the Haryana VAT Act, the standard rate of tax under is 12.5% (applicable for all items not specifically mentioned in respective schedules). Further, section 7A also imposes a 5% surcharge over and above the actual rate of VAT (Effective rate of 13.124%).

Similarly, a specified rate for certain materials is also specified for example rate of 5 % is specified for Iron & Steel. So, the question has arisen whether the rate of 13.125% should apply to the work contracts, as the rate of work contract is not specified under any schedule or the rate of material-specific rate to be applied.

As per practice adopted by the department, the taxable turnover is subject to tax at the appropriate rate in the ratio of actual purchase, and in absence of availability of details regarding the actual purchase, the department considered the ratio as per CPWD norms that consider 30% pertain to Iron and steel. So we also consider the same ratio to determine the actual rate of tax to be applied.

Example of Tax Rate Calculation

Based on the above discussion, we determined the rate of HVAT as per the below table

HVAT Tax Rate Calculation	
Particulars	Amount
Gross Turnover	100.00
Less: Cost of Land (25%)	25.00
Balance Turnover	75.00
Less: Cost of Labour & Services (25%)	18.75
Taxable Turnover	56.25

Steel & Iron Purchase percentage (30% as per CPWD Norms)	16.88
Balance Turnover Related to Other Goods and taxable to the standard rate	39.38
Tax on Steel & Iron (5%)	0.84
Tax on Other Goods (12.5%)	4.92
Total Tax	5.77
Add : Cess 5%	0.29
Tax Inc Cess	6.05
Effective Tax Rate	6.05%

Further, section 42 of the HVAT Act provides that both contractor and sub-contractor are jointly and severally liable to pay tax in respect of transfer of property whether as goods or in some other form involved in the execution of works contract by the sub-contractor. No tax is payable by the contractor if he proves to the satisfaction of assessing authority that the tax has been paid by the sub-contractor and assessment of such tax has been finalized. In the case, where the developer awards any portion of his contract to a contractor or sub-contractor, such developer was eligible for deduction on account of the amount paid by the contractor or the sub-contractor under the Act.

So the rate would be further reduced by such proportion, however, it may be noted that the developer has already paid tax on the payment made to the contractor/subcontractor. Further, as per requirement, the above-said deduction is available only furnishing of supporting documents such as assessment order /proof of tax paid by subcontractors and in absence of such documents, no deduction was allowed in the Assessment order produced for the year 2014-15 and 2015-16. So we also did not consider the same.

The company further informed that the VAT assessment for the year 2016-17 was not completed and not available however the position of the company would remain the same.

For better clarity, we calculated the actual rate of VAT charged to the company as per the below table:

Effective Rate for the Assessment Year 2014-15

Sr. No.	Particulars	Amount
A	Gross Turnover determined	1657822026

B	Tax Assessed	74830846
C	Interest for short/late payment	56327136
D	Penalty	0
E	Total Tax include interest and penalty	131157982
F	Effective Tax Rate before interest and Penalty	4.51%
G	Effective Tax Rate Including interest	7.91%

Effective Rate for the Assessment Year 2015-16

Sr. No.	Particulars	Amount
A	Gross Turnover determined	513557747
B	Tax Assessed	30873647
C	Interest for short/late payment	25872116
D	Penalty	167800
E	Total Tax include interest and penalty	56913564
F	Effective Tax Rate before interest and Penalty	6.01%
G	Effective Tax Rate Including interest	11.08%

For the first quarter of 2017, the company has hardly issued any invoice and the same is not relevant so we consider two rates of tax available with us. We have the following options as follows:

1. Applied actual rate before tax and penalty to the relevant assessment year according to the deemed date of possession. For example, if the deemed date of possession is Feb 2015 then the rate of tax would be 4.51%.
2. Applied average rate before tax and penalty to all projects i.e. 5.26% (4.51+6.01/2).
3. Applied lowest of two rates before tax and penalty to all projects i.e. 4.51% (lowest of 4.51/6.01).

To avoid the complexity of calculation and to provide maximum benefit to the allottees we recommended considering the lowest rate of tax for VAT i.e. 4.51 %. (**VAT Assessment Order for the year 2014-15 is**

attached as Annexure-9 VAT Assessment Order for the year 2015-16 is annexed as Annexure-10 and CA certificate for anti-profiteering working at Annexure-11)

II. Computation under composition scheme:

HVAT Act, 2003 defines 'Contractor' as any person who executes either himself or through a sub-contractor a works contract. A contractor is to get himself registered under the HVAT Act either as a dealer under Section 11 or lumpsum dealer under Section 9 of the Act.

Lumpsum dealer is required to pay tax at the rate of four percent (up to 11th August 2014) and five percent (from 12th August 2014) of gross receipts and they are not eligible for availing the benefit of an input tax credit. Non-lumpsum dealer/contractor is liable to pay tax at the applicable rates on goods used in the execution of works contract.

For the composition scheme, there was two scheme available in Haryana. One is Haryana Alternative Tax Compliance Scheme for Contractors, 2016 for the period up to the period up to 31.03.2014 and another is a normal composition scheme for developers for the period from 01.04.2014 to 30.06.2017.

So, we discuss the scenario as under:

1. Haryana Alternative Tax Compliance Scheme for Contractors, 2016:

   The State Government notified (12th September 2016) "The Haryana Alternative Tax Compliance Scheme for Contractors, 2016" for the recovery of tax, interest, penalty, or other dues payable under the said Act. The scheme could opt for any period which may commence with any financial year (to be chosen by the applicant i.e. developer/builder) and end with 31st March 2014. A contractor opting under this scheme shall pay year-wise, instead of tax, interest, or penalty arising from his business, by way of one-time settlement, a lumpsum amount at the rate of one percent of the entire aggregate amount, received/ receivable for the business carried out during the year, without deduction of any kind. Further, a surcharge at the rate of five percent shall be charged on the amount so payable. The contractor opting for the scheme shall apply online in form TC-1 to the concerned AA within ninety days from the date of notification.

Some key point of the scheme was as under:

i. Flat Rate of 1.05% pay-off of VAT liability of aggregate amount received / receivable.

ii. No interest, penalty, or charges

iii. The benefit of the amount already paid as VAT, Interest, or Penalty

iv. The excess amount paid can only be adjusted in subsequent years.

v. The scheme is to be opted within 90 Days from 12/09/2016 by filing online Form TC-1

vi. The scheme is also available to contractors who have opted for the composition scheme under Rule 49 of the HVAT Rules, 2003. The scheme can opt irrespective of the fact that assessments are pending or have attained finality or assessment orders are pending before any authority under the Act or any court of law.

vii. Scheme if opted for any assessment year will result in automatically deemed to be opted for that year as well as for period up to 31st March 2014

viii. The scheme is available to all builders, whether registered under Haryana VAT or not

II) Recovery of Tax from Flat Buyers – Allowed or Not?

As per Rule 49A(2) the composition developer is not eligible to collect any amount by way of tax under the Act as well as not eligible to issue taxes invoices. However, The Haryana Alternative Tax Compliance Scheme for Contractors, 2016 is completely silent on whether the burden of tax can be passed on to the buyers or not.

As there is no specific provision regarding debar to the collection of taxes (as in case of Rule 49A(2) in the above-said scheme so the developer may collect taxes subject to terms of Apartment Buyer Agreement or Agreement to sell between Developer and Buyer.

2. Composition scheme after 31.03.2014

For the builders involved in the execution of works contract and opt for the composition scheme, the rules 49A was introduced vide NOTIFICATION No. S.O. 89/H.A.6/2003/S.60/ 2014 dated

12.8.2014 as amended by Notification No. 23/H.A.6/2003/S.60/2015 Dated 24th September 2015.

As per amended rule 49A a builder opted for this scheme need to deposit a lumpsum amount @ 1% of the entire aggregate amount specified in the agreement or value specified for stamp duty, whichever is higher, in respect of the said agreement

However, the following restrictions will be applicable on the builder opting for a composition scheme:

- Composition Developer shall be treated as NON- VAT dealer and not eligible to claim input tax credit u/s 8.
- Composition Developer shall not be eligible for deduction on account of tax paid by the contractor /subcontractor.
- Composition Developer shall purchase goods for use in the execution of the works contract from a registered dealer of the State but shall not be entitled to claim any input tax credit thereon.
- If the input tax in respect of any goods purchased in the State has been availed of by a developer and such goods are held in stock at the time of option of composition scheme, the input tax in respect of such goods shall be reversed. In case any goods used in the execution of works contract are procured or purchased from dealers other than the registered dealers from within the State or from outside the State on which no tax has been paid to the State, the composition developer shall be liable to pay an amount equal to the amount of tax that would have been payable, had the goods been purchased within the State from a registered dealer.
- The composition developer shall be entitled to purchase or receive goods, from any place outside the State including imports from out of India, against prescribed declaration forms, to be used in the execution of the contract at any time during the period for which the composition remains in force under this Scheme, but he shall pay tax at the rate of 4% on purchase price thereof and on goods purchased and or received from any place outside the State and held in stock at the time of option of the composition scheme, and such tax shall not be adjustable towards his composition tax liability
- The composition developer not be entitled to use declaration Form VAT D-1 for purchasing goods at concessional rate of tax from within the State

- Composition Developer shall not collect any amount by way of tax.
- Composition Developer shall not issue Tax invoices.
- Composition Developer shall retain the originals of all tax invoices and all the retail invoices for all his purchases.
- Composition Developer shall not be entitled to refund.

The scheme is the option for the developer so he may opt for the scheme or he can choose the normal scheme for discharge of his VAT Liability.

BPTP Position:

The tax scheme opted by BPTP is exhibited in the below table :

HVAT Scheme Opted by BPTP			
Period	Scheme	Rate of Tax	Recovery from Customer
up to 31.04.2014	Haryana Alternative Tax Compliance Scheme for Contractors, 2016	1%	Yes
From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes

Further, BPTP Clarified that due to stringent conditions and restrictions imposed by the composition scheme w.e.f. 01st April 2014 the company did not opt for the scheme and fell under assessment as per the normal scheme.

Judicial View on VAT

A similar matter was decided by The National Consumer Disputes Redressal in the case of The primary grounds on which compensation have been sought before the NCDRC were:

(i) Delay in handing over possession of the flats;

(ii) Reimbursement of taxes and interest charged to the flat purchasers under clause 1.10 of the ABA;

NCDRC held that there was no deficiency of service on their part in complying with their contractual obligations and, that despite a delay in handing over the possession of the residential flats, the purchasers were not entitled to compensation more than what was stipulated in the Apartment Buyers Agreement

In the judgment of Wg.Cdr Arifur Rahman Khan & Aleya Sultana & Others. Vs DLF Southern homes Pvt ltd decided on 24.08.2020 by the Hon'ble Supreme Court of India in Civil Appeal no. 6239 of 2019 6303 of 2019 held that the specific conditions contained in the ABA imposed the liability to bear the proportionate share of taxes on the purchasers. Clauses 1.3 and 1.10 leave no manner of doubt concerning the position and there is no deficiency of service concerning the demand of interest payable on the tax which was required to be deposited with the revenue.

Relevant paras of judgment are reproduced here as under :

"Tax

44 The ABA contained specific provisions in regard to the payment of taxes.

Clause 1.3 of the ABA provided:

"1.3 The Allottee shall make the payment of the Total price as per the payment plan set out in annexure -III of this Agreement. Other charges, securities, payments etc. (as specified in this Agreement), Taxes and increase thereof (as provided in clause 1.10) shall be payable by the Allottee, as and when demanded by the Company."

Clause 1.10 contained a specific provision in regard to the obligation of the allottee to pay taxes in addition to the total price. Clause 1.10 provided:

"1.10. The Allottee agrees and understands that in addition to Total price, the Allottee shall be liable to pay the Taxes, which shall be charged and paid as under:

a) A sum equivalent to the proportionate share of Taxes shall be paid by the Allottee to the Company. The Proportionate share shall be the ratio of the Super Area of the said Apartment to the total super area of all the apartments other buildings shop, club etc. in the said complex.

b) The Company shall periodically intimate to the Allottee herein, on the basis of certificates from a Chartered Engineer and /or a Chartered Accountant, the amount payable as stated above which shall be final and binding on the Allottee and the Allottee shall make payment of such amount within 30 (thirty days) of such intimation." The ABA also contains the following provisions:

"2. Payment for taxes on land, wealth-tax, cesses etc. by Allottee: -

The Allottee agrees and confirms to pay all Government rates, tax on land, municipal tax, property taxes, wealth tax, Building and Other Construction Workers Welfare Fund (Cess),taxes, one time building tax, luxury tax if any, fees or levies of all and any kind by whatever name called, whether levied or Leviable now or in future by the Government or municipal authority or any other governmental authority on the Said Complex and I or the Said Building or land appurtenant thereto as the case may be as assessable or applicable from the date of the Application if the Said Apartment is assessed separately and if the Said Apartment is not assessed separately then the Allottee shall pay directly to the

concerned authority and if the same is levied on or paid by the Company or the Allottee then the same shall be borne and paid by the Allottee on pro-rata basis and such determination of proportionate share by the Company and demand shall be final and binding on the Allottee. However, if the Said Apartment is assessed separately the Allottee shall pay directly to the Government Authority.

46 *On behalf of the developer it has been submitted that when construction commenced in 2009, there was an absence of clarity on whether works contract tax was liable to be paid in relation to agreements between owners-developers and allottees of apartments where the apartments were to be delivered in future. In 2013, this Court delivered its judgment in Larsen and Toubro Limited v State of Karnataka23 as a result of which the liability towards works contract tax was adjudicated upon. Consequently, while computing the amount payable in the final statements of accounts, the developer passed on the interest burden but not the penalty on a proportionate basis in terms of clause 1.10. The allottees were required to pay their proportionate share of the works contract tax in terms of the ABA and the final demand was raised at the time of the offer of possession.*

47 *The specific conditions contained in the ABA clearly imposed the liability to bear the proportionate share of taxes on the purchasers. Clauses 1.3 and 1.10 leave no manner of doubt in regard to the position. The developer has offered an explanation of why as a result of pending litigation, the dues towards works contract tax were not paid earlier. Indeed, if they were paid earlier, the purchasers would have been required to reimburse their proportionate share of taxes earlier as well. No part of the penalty imposed on the developer has been passed on to the purchasers. In view of the terms of the ABA and the explanation which has been submitted by the developer, there is no deficiency of service in regard to the demand of interest payable on the tax which was required to be deposited with the revenue."*

In view of the above decision, we are of the view that the developer is entitled to charge HVAT as per the applicable rate as and when the same is assessed and finalized by the assessing authority.

GST post 01-07-2017:

As per the GST (Goods and Services Tax) law, construction of a complex, building, civil structure, or a part thereof, including a complex or building intended for sale to a buyer is a supply of service and hence, is liable to the goods and services tax (GST).

Rate of GST GST-18% (both CGST and SGST)

Abatement for land- 1/3 One third on Value (including basic, PLC, and EDC/IDC)

Effective Rate -12%

Summary of Tax Rate Analysis: Pre & Post GST

The breakup of the pre-GST tax payment structure by the builder and after imposition of GST structure is explicitly explained as follow:

I. Before GST i.e., up to 30.06.2017

1. Service Tax Rate- 15% (including cess)

   Service Tax on Basic and was levied at 30% ie. 70% abatement with CENVAT Credit on capital goods & Input Services, Effective Rate -4.5%

2. Haryana Value Added Tax (HVAT) – Based on Actual tax born by developers

   - Rate-1.05% of the applicable amount till 31st March 2014, if developer opted for the amnesty scheme
   - Rate-6.05 % of the applicable amount from 01st April 2014, if developer opted for the normal scheme
   - Rate-1.05 % of the applicable amount from 01st April 2014, if developer opted for composition scheme

II. Post GST i.e.as on 01.07.2017

GST-18% (9% CGST and 9% SGST)

Abatement for land- On third on Value (including basic, PLC, and EDC/IDC)

Effective Rate -12%

Further, the above rate is reduced by Anti-Profiteering benefit- on an applicable amount on which GST is charged from Opposite Party. The builders may pass on benefits at the time of offer of possession to all customers.

Impact of the Increased rate of GST Implementation

Particulars	Rate Prior GST	Rate Post GST
HVAT (after 31.03.2014)	4.51 %	-
Service Tax	4.5%	-
GST		12%
Less: Anti-Profiteering benefit passed if any		0 %
Effective Rate	9.01%	12%
Impact due to GST	2.99%	

From the above calculations, it is clear that the additional burden on the homebuyers after the incoming of GST is 1.45%. so, the additional burden of 1.45% is to be refunded to the homebuyers.

Conclusion:

After taking into consideration all the material facts as adduced and produced by both the parties, the committee hereby concludes as under:

1. **Service Tax:**

The promoter is entitled to charge Service Tax from the aliottee for the period up to 30.06.2017 as per the rate specified in the below table :

The effective rate of service tax on construction of a complex, building, civil structure, etc

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%

2. **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 31.04.2014	Haryana Alternative Tax Compliance Scheme		

for Contractors, 2016	1.05%	Yes	
From 01.04.2014 to 30.06.2017	Normal Scheme	4.51%	Yes
From 01.04.2014 to 30.06.2017	Composition Scheme if opted by the developer. This does not apply to BPTP as he did not opt for a composition scheme.	1.05%	No

3. **GST: For projects where the due date of possession was before 01.07.2017 (date of coming into force of GST):**

The delay in delivery of possession is the default on the part of the promoter and the possession was offered after 01.07.2017 by that time the GST had become applicable. As per complainants, it is a settled principle of law that a person cannot take the benefit of his wrong/default. Further, the complainants claimed that GST is a new tax as well the customer was charged with the burden of the incremental rate of taxation. So we examine all the facts as follows:

GST/New Tax

GST is an indirect, comprehensive, broad-based consumption Tax that subsumes many central and state taxes. The objective was to remove the multiplicity of tax levies thereby reducing the complexity and removing the effect of Tax cascading. the subsumption of a large number of taxes and other levies allowed a free flow of a larger pool of tax credits at both central and state levels.

So the implementation of GST is nothing more than shifting from one regime to another tax regime in the year 2003-2004 many states were migrated from sales tax to VAT regime. Further, the relevant clause of BBA is allowed to levy any new tax imposed by the Government.

Incremental rate of taxation due to implementation of GST :

It should also note that if the promoter was able to deliver possession before implementation of GST then the customer is liable to pay HVAT and Service Tax as per applicable rate.

Under GST, the tax rate has been pegged at 18% (or 12% for specified affordable housing projects), with a standard 33% abatement being provided towards the value of the land. Thus, the effective GST rate for the sale of under-construction properties is 12%/8% of the entire agreement value as compared to around 10.5%/5.5 (i.e. 4.5% Service

Tax and 6% VAT under the normal scheme or 1 % under composition scheme) under the erstwhile indirect tax regime.

So the customer was burned by an incremental rate of taxation due to delayed possession of the unit.

In the matter of Nitin Pandey & Anr. vs M/S. Emaar Mgf Land Ltd. & Anr. on 24 December 2021 before the NCDRC, the customer was demanded that due to amendment in Service Tax Law, the rate of service tax was increased and the Complainants are bound to pay the hike in service tax only because of delay on the part of the Opposite Party in completing the construction and handing over the possession

So he should grant immunity from payment of any charges incurred enhanced service tax. However, no affirmative answer was given by the NCDRC.

Similarly in the matter of Rasheed Ahmad Usmani & 8 Ors. vs Dlf Ltd. on 2 July 2019 on 2 July 2019 before the NCDRC the Service tax had also increased to 12.3% and 14.5% and thus the buyers had to pay higher service tax due to delayed possession however NCDRC held that these complainants are not entitled to this relief.

Role of Developer

GST being an indirect tax is collected from the customers and paid to Government. The role of the promoter is of acting as an agent on behalf of the Government to collect taxes from customers and pay to the Government after claiming due credit in respect of already paid tax in the form of Service Tax, VAT & GST.

So the developer needs to pay taxes to the Government which was collected from the allottees and nothing is left in the pocket of the developer.

Conclusion

So, considering the applicable provisions, the default of late delivery by the promoter we are of the view that the difference between post-GST and Pre GST should be borne by the promoter, and the respondent/promoter was entitled to charge GST from the complainant/allottee as per the applicable combined rate of VAT and Service tax as explained above.

Project Specific GST to be refunded:

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-Profiteering 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%

Note: If any amount is already refunded or settled down with the allottees on account of GST should be adjusted from the above calculation.

II. GST: For projects where the due date of possession was after 01.07.2017 (date after implementation of GST): For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled to charge GST however the benefit of anti-profiteering, if any, should be passed to the allotees.

iv. **Club Membership Charges, Cost Escalation and Electrification Charges:** The demand for club membership charges, cost escalation and electrification chargers will be raised at the time of 'offer of possession'. The possession will be offered after obtaining occupation certificate, which is pending consideration in the office of DTCP, Haryana, Chandigarh. Hence, the issues raised are premature and without any cause of action.

d. Occupation Certificate, Fire NOC, Environment Clearance, Ground Water Extraction & HAREA Registration:

i. The respondent company has already applied for the grant of Occupation Certificate ("OC") to the Department of Town and Country Planning ("DTCP"), Haryana, on 18.01.2021.DTCP has considered the request in-principle for towers no. T20, 21, 24 & 25, as conveyed vide memo no. ZP-437-Vol.-III/2021/31083 dated 09/12/2021 (**Annexure-12**), for the purpose of inviting objections/suggestions from the general public/existing allottees, within 10 days from the date of grant of in-principle approval, for construction of 152 units (22 extra), instead of 141 units without approval of building plan with certain conditions mentioned in the memo

ii. The respondent has already received Fire NOC vide Memo No. FS/2021/47 dated 01.03.2021(**Annexure-13**) issued by the Fire Station Office.

iii. The environment clearance has been issued by State Environmental Impact Assessment Authority, Haryana vide Memo No. SEIAA/HR/2016/574 dated 20.01.2016 (**Annexure-14**).

iv. The project registration certificate was issued by the Hon'ble Authority on 13.10.2017, which was valid upto 12.04.2021(**Annexure-15**), including the moratorium period of 6 months granted by the Hon'ble Authority due to ongoing pandemic. The respondent company has already applied for the extension of the registration vide application dated 15.04.2021**(Annexure-16)**.

v. The Hon'ble Punjab & Haryana High Court has banned extraction of ground water for construction. No ground water is being extracted at site.

Recommendations:

i. The relief sought at sr. no. (a) and (b) does not fall within the purview of the Committee. A decision on the same is to be taken at the level of Hon'ble Authority.

ii. As regards the relief sought at (c), the Committee notes that the project Terra forms part of the same group housing colony, wherein projects Spacio and Park Generation are located. Further, the respondent Company had applied for grant of occupation certificate of the towers in the project Terra. DTCP has considered the request in-principle for towers no. T20, 21, 24 & 25, as conveyed vide memo no. ZP-437-Vol.-III/2021/31083 dated 09/12/2021 (**Annexure-12**), for the purpose of inviting objections/suggestions from the general public/existing

allottees, within 10 days from the date of grant of in-principle approval, for construction of 152 units (22 extra), instead of 141 units without approval of building plan with certain conditions mentioned in the memo. The final approval will be considered only after examining objection received within 30 days of the notification. The OC of towers 22 & 23 is still under consideration. Legally, the respondent company cannot offer possession to the allottees of the towers T20, 21, 24 & 25 till the final approval is granted by the Competent Authority. Hence, it will not be possible for the Committee to anticipate the demand likely to be raised by the respondent company at the time of offer of possession. Notwithstanding that, the committee is of the view that the recommendations made in the cases of nominees of projects Spacio and Park Generation on issues concerning super area, car parking charges, development charges, PLC, electrification charges, club membership charges, cost escalation, advance maintenance, GST & VAT etc. may be implemented in case of the allottees/complainants of Terra project also and the respondent may be directed to comply with the same while offering possession.

iii. The respondent has provided the copies of all the statutory clearances pointed out by the complainant (Annexures-12 to 16). The complainant was apprised of it during the course of discussion in the meeting.

III. Park Mansion Prime (GH, Sector-67):

Overview of the Project:

i. The respondent company has executed and entered into various collaboration agreements with the land owners for developing a group housing colony over an area measuring 11.068 acres in sector-66 & 67 at Gurugram. The license bearing No. 31 of 2008 was granted by the DTCP, Haryana, Chandigarh for developing the said colony. Initially, the building plans of the project were sanctioned by the competent authority on 08.12.2008. The revised building plans were approved on 05.06.2012. The permissible coverage of the project is 73,355.227 sq. m. or 7,89,595.66 sq. ft. on site area measuring 10.358 acres, but the sanctioned coverage (FAR area) is 72,782.04 sq. m. or 7,83,425.87 sq. ft.

ii. The project comprises of two sub-projects namely Park Prime and Park Mansion. The project Park Prime stands fully developed having an FAR of 40,318.86 sq. m. or 4,33,993.20 sq. ft. The Occupation Certificate of the project (Towers-D, E, F, G, H and J) was issued on 10.02.2014 and it has been handed over to RWA.

iii. The construction of the project Park Mansion has also been completed and the respondent company has obtained Occupation Certificate of the Tower-A (2 blocks) and Tower-B (2 blocks) issued by the competent authority on 14.02.2020 (**Annexure-17**). The FAR area of the project Park Mansion is 27317.304 sq. m. (294043.46 sq. ft.). The balance FAR in the project is 1600 sq. m.

iv. Only the allotees of park mansion have filed complaints before the Hon'ble Authority, hence, the issues involved therein have been discussed in the report.

The counsels of the complainants were telephonically requested by the Authority to nominate any allottee/complainant for discussing the common issues raised in the complaint. However, they did not respond. Consequently, none attended the discussion from Park Mansion side. The respondent company informed that Ms Rhea Arora [Complaint No. 3023 of 2021 (Old Complaint No. 2557 of 2021)] is the lead complainant before the Hon'ble Authority, who has raised issues similar to the issues raised by the complainants in Spacio and Park Generation. Hence, the Committee directed the respondent company to submit its statement on all the issues raised in her complainant and also other complainants in the project keeping in view the discussion held with the nominees of Park Generation and Spacio in earlier meetings. Accordingly, the respondent company has submitted its statement on all the issues, which is discussed below with recommendations of the Committee thereon:

It is clarified that a number of complaints have been filed before the Hon'ble Authority by the allottees of project Park Mansion. However, the Committee has referred the documents/papers available in the record of the Hon'ble Authority in the lead complaint no. 3023 of 2021 titled as Rhea Arora Vs BPTP Ltd. and the information/papers made available by the respondent company during the course of meeting. Hence, the recommendations made by the Committee will be applicable on other complaints, involving similar issues, filed against the respondent company in the project Park Mansion.

A. Super area:

i. The flats in the project have been sold on the basis of super area as per clause 2.1 of the agreement executed between the allottee/complainant and the respondent company. The Clause 2.4 of the Agreement provides that the super area of the respective flats stated therein was tentative and was subject to change till the handing over of physical possession. The term super area has been defined under clause 4.34 of the FBA (**Annexure-18**), which is reproduced hereunder:

"Super Area shall be the sum of Covered Area (as defined herein) of the Flat and its non-exclusive pro rata share of Common Areas (as defined herein), in the colony upto its periphery including all elevation features/projections.

The Flat if provided with usable open terrace(s) and balcony (ies), the area of such open terrace(s) and balcony(ies) shall also be included in the Super Area of the Flat, however, the Purchaser(s) shall not be entitled to cover such terrace(s) and balcony(ies) and shall use the same as open terrace(s) and balcony(ies) only and in no other manner whatsoever."

ii. Further, the terms common area and covered area used in the definition of super area have been defined under clauses 4.10 and 4.13, which are reproduced below.

"Clause 4.10- Common Area shall mean all such parts/areas in the Colony, which the Purchaser(s) of the Flat shall use by sharing with other occupants of the Colony including corridors and passages, open spaces for common use, atrium, common toilets, lifts and lift lobby, security/fire control room(s), all electrical shafts, DG Shafts, pressurization shafts, plumbing and fire shafts on all floors and rooms, staircases, mumties, lift machine rooms and water tanks, gate house/structure. In addition, entire area in the basement including but not limited to electric substation, transformers, D G Set Rooms, underground water and other storage tanks, pump rooms other than specific parking space/area allotted to the Purchaser(s), area for making provisions for rain water harvesting with respect to the colony, area for making provisions for rain water harvesting with respect to the colony, area for making provisions for the sewage treatment plant with respect to the Colony, maintenance and service rooms, fan rooms and circulation areas etc and any other area in the Colony/building to be utilized for the purposes of common facilities and amenities, except as specifically excluded as per the terms of the Agreement, shall be counted towards Common Areas."

"Clause 4.13- Covered Area shall mean the entire area enclosed by the periphery walls including area under walls, columns and half the area of walls common with other premises, which form integral part of the Flat, including balcony(ies), if any, internal shafts for the use of the Purchaser(s)."

iii. That 140 penthouse were provided in 4 towers (A type 2 blocks and B type 2 blocks) each having super area measuring 2764 sq. ft. at the time of launch of the project. Later, the building plans were revised and got sanctioned from the competent authority on 05.06.2012. As per the approved plans, the design of the top 4 flats in each towers (total 16 flats) were changed by providing usable exclusive terrace space. The super area of each of these

penthouse has increased from 2764 sq. ft. to 3605 sq. ft. each. The super area of the remaining 124 penthouse has also increased from 2764 sq. ft. to 3044 sq. ft.

iv. The specific area (unit+ balcony area) of all the apartment at the time of launch of the project was 2252 sq. ft. (2010+242). The specific area of each of 124 penthouse as per the revised approved building plan is 2252 sq. ft. (2010+242) and the specific area of each of the remaining 16 penthouse is 2743 (2209+534).

v. That total super area of the project Park Mansion at the time of launch was 35949.46 sq. m. or 386960 sq. ft. that increased to 40425 sq. m. or 435136 sq. ft. after completion of the project. The increase in the super area has taken place due to some increase in the specific area and an appreciable increase in the non-inclusive common areas during the course of construction. The total specific area (unit+balcony area) of all the 140 penthouse was 29290.22 sq. m. or 315280 sq. ft. at the time of launch of the project that increased to 30020.06 sq. m. or 323136 sq. ft. after completion of the project, registering an increase of 729.84 sq. m. or 7856 sq. ft. or Similarly, the area under non-exclusive common areas was increased from 6659.23 sq. m. or 71680 sq. ft. . to 10405.05 sq. m. or 112000 sq. ft. showing an increase of 40320 sq. ft.. The saleable area/specific area factor at the time of launch of the project was 1.2274 (386960/315280). After completion of the project the saleable area/specific area factor of 124 penthouse changed to 1.352(377456/279248). The super area of these 124 apartments has been worked out by multiplying the specific area with the aforementioned factor i.e. 1.352. For example, the specific area of the apartment allotted to the lead complainant Rhea is 2252 (2010+242) as per the calculation details of the super areas, specific areas and common areas provided by the respondent. Its super area has been worked out to 3044 sq. m. (22528*1.352).

vi. The same multiplier 1.352 has been used for working out the super area of the remaining 16 penthouse. However, while calculating the super area of these flats, the terrace area has been excluded from the specific area of the apartment and after multiplying the unit area+balcony area with 1.352, 50% of the usable terrace has been added to the area so worked out. For example, the super area of this type 16 penthouse is 3605 sq. ft. The specific area of these flats has been taken as 2451 sq. ft. (2209 +242). After multiplying with the factor, the area of the apartment becomes 3313 sq. ft. the total terrace area allotted to

the owner is 584 sq. ft, half of which i.e. 292 has been added to it to work out the final super area measuring 3605 (3313+292).

vii. The calculation details of super areas, specific area and common areas are enclosed at **Annexure-19**. The additional common areas have been shown on the revised approved plan distinctly, which are also attached as Annexure-19.

viii. In view of the above submission, the respondent pleaded that the company is entitled to increase the super area of the apartments in terms of the clause 2.4 read with clause 4.10 and 4.13 and 4.34 of the agreement.

Recommendations:

The Committee observes that:

i. The details of the specific (unit+balcony) area and non-exclusive common areas, provided by the respondent company, have been examined by the Committee (Annexure-19). The components of the non-exclusive common areas are core shaft, mumty/ lift machine room, water tank, double height lobby area, terrace for second , architectural feature wall, steel stair case, non-parking and non-drive areas in the basement.

ii. The Committee observes that the respondent company has included area of the Architectural feature on terrace in the common areas that measures 3756 sq. ft. approximately. It is an architectural feature provided by the respondent company to improve aesthetics of the towers. Besides, this component does not find any mention in list of the common areas mentioned in the agreements. Hence, its inclusion in the common areas is not justified at all and its area may be excluded from the common area as recommended in the case of Park Generation and Park Spacio.

iii. Consequent upon exclusion of the above mentioned component, from the list of the common areas, the common areas will decrease from 112000 to 108245 sq. ft. Now, the saleable area/specific area factor (377456/279248) will reduce from 1.352 to (373701/279248) to 1.338 (373701/279248). Accordingly, the super area of the apartment measuring 3044 sq. ft will reduce to 3013.72 sq. ft. (2252x1.3382) and the area of the penthouse measuring 3605 sq. ft will reduce to 3572 sq.ft (2451x1.3382+292). Accordingly, the respondent company may be directed to pass on this benefit to the remaining complainants/allottees.

ix. The area under the remaining components of the common area mentioned in the Annexure-19 may be allowed to be included in the super area in terms of the enabling clause 2.4 read with clauses 4.10 and 4.13 and 4.34 of the agreement.

B. Cost Escalation: The respondent stated that at the stage of booking itself, the Complainant was aware of the cost escalation in terms of the clause 35 of the 'application for allotment', wherein it was mentioned that actual cost of the flat may escalate due to increase in the cost of raw materials labour and project management in due course of construction and in such an eventuality, the company would seek revision in the price. The clause 35 of the terms and conditions of the Application for Allotment has been reiterated in Clause-12.11 if the FBA, which is reproduced here under for ready reference:

Name of the project: Park Mansion, Sector 66, Gurugram: The lead case complaint No. 3023 of 2021 Reha Arora Versus BPTP Ltd was verified as under:

Relevant Clause as per Agreement:

In terms of the Clause mentioned in the booking form - "Clause no.40" & in terms of the agreement "Clause no 4.3 or 12.11" duly accepted and signed between the customer and the company, the cost escalation is to be borne by the customer. The aforesaid clauses are reproduced below for ready reference:

Builder Buyer Agreement (Clause No: 12.11)

"12.11 That the Basic Sale Price is escalation free but the same is subject to revision of prices of steel, cement and other raw materials beyond 10% increase as per index price as on 01.09.2009. The revision of the Basic Sale Price by the Seller shall be made at its sole and absolute discretion and the Purchase(s) agrees to not to dispute the same."

On a plain reading of the above clause, the following key issues emerge to examine by the committee:

1. Ascertain the estimated cost of construction at the time of booking/at the time of the agreement, as the case may be;
2. Absorption of 10 % inflation by the developer;

3. Measurement of cost inflation based on CPWD Index or any other Index;

4. Inflation benefits to be provided for the period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession;

So we evaluated each issue as follows:

1. **The First Issue is to decide the estimated cost of construction at the time of booking/at the time of agreement:**

   In the agreement, the developer did not specify the estimated cost of construction at the time of booking or at the time of execution of the contract. The relevant portion of the agreement says "the revision by the company shall be made at its sole and absolute discretion and the purchaser(s) agree to not to dispute the same the revision by the company shall be made at its sole and absolute discretion and the purchaser(s) agree to not to dispute the same."

   As per Annexure- 'E'- Note on Cost of escalation charge of the possession letter dated 05.03.2020 the developer provided one calculation as per annexure 'F' of the letter.

   In the said letter of possession, the developer identified that the budgeted cost per sq. feet on the saleable area for the Finacial year 2010-11 was Rs. 1969.85/-. The same has been certified by the chartered accountant and taken on the record for the purpose of further calculation.

   The above figure of cost per sq feet of the project has been taken from the annexures attached with an offer of possession.

2. **The second issue is to absorption of 10 % inflation cost:**

   The relevant clause no 12.11 of the said agreement is that the Basic Sale Price is escalation free but the same is subject to revision of prices of steel, cement, and other raw materials beyond 10% increase as per index price as of 01.09.2009.

   Accordingly, no escalation charges can be levied in case the variance is equal to or less than 10%, of the cost of construction, ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. It also means that escalation up to 10 % was already accounted

for in the basic price charged from the buyers. In the above context, 10% cost inflation is to be born by the promoter and the rest may be ascribed to purchasers.

3. **The third issue is identification and measurement of the cost inflation Index:**

In the agreement for calculating the variance in the cost of construction index price of 01.09.2009 was mentioned however the name of the Index was not provided. The cost index of CPWD which is declared on a six-monthly basis is appropriate and there cannot be any dispute about it. In cases where no such formula has been prescribed the CPWD index for calculating the variation in the cost of construction will be a good guide.

4. **The fourth issue is related to the Inflation benefit period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession.**

The possession clause 3.1 of the agreement is as under:

3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the seller/conforming party and any restraint/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 in 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 of otherwise from time to time. The Seller/Confirming Party proposes to handover the possession of the Flat to the Purchase(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 grace 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. The Seller/Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to handing over the possession whereafter' within 30 days' the purchase(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the flat. In case, the Purchaser(s) raises any issue with respect to

any demand, the same would not entitle to the purchaser(s) for an extension of the time for taking over possession of the Flat.

It was agreed that the possession of the apartment will be given within 36 months. A further grace period of 180 days was agreed to apply to obtain an occupation certificate. As the builder failed to apply the OC within 180 days after the expiry of the commitment period, accordingly, is not entitled to the benefit of the grace period. So as per the above clause, the possession of the apartment should have been delivered within 36 months from the date of execution of the contract.

The company offered maximum possession in the year 2020 and with a delay of almost 7 years.

The question that arises before the committee is whether the cost escalation should be allowed up to the deemed date of possession i.e., 36 months from the date of execution of a contract (16.09.2010), or up to the actual date of the offer of possession i.e., 2020. As most of the complainants paid a major part of the sale consideration and there was no default on the part of the complainant in making payment to the promoter. The project has been delayed by over 3 years for no fault on the part of the complainant.

It is, therefore, fair and just that the cost escalation, should be calculated only from the date of executing/date specified in the flat buyer agreement i.e. Sep 2010 up to the deemed date of delivery of possession i.e. 15.09.2013, or up to the grace period i.e. 15.03.2014. No escalation in cost can be allowed after 15.09.2013 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant.

Cost of Escalation as demanded by the company:

Particulars	ApplicableIndex	Index Value
Basic Index (CPWD index as on 01.09.2009)	April'09	113.00

CL1 (CPWD Index as on 01.09.2010)	April'10	136.00
CL2 (CPWD Index as on 01.09.2011)	Arpil'11	149.00
CL3 (CPWD Index as on 01.09.2014)	Arpil'14	178.50
Avg. Index Price for the period		154.50
%Escalation ((Avg. Index/Base Index)-1} %		37%
Budgeted cost per sq. ft. on Saleable Area FY10-11 (as per financial statement)		1969.85
Cost Escalation (Budgeted Cost x% escalation)		723.44

CA Certificate for cost escalation is attached as Annexure-20.

Cost of Escalation Rework by the Committee

Based on a combined analysis of all these points, the cost of inflation is to be allowed to the company as per the following calculation.

Rework Calculation by the committee Park Mansion	
Description	Amount in Rs
Total Construction budget Cost	1,970
Construction materials as per norms of CPWD 75% of (A+B)	1,477
CLSL	113
CPWD Index as on 01.09.2009	
CL1 for the year 1 (Sep 2011)	136

CL2 for the year 2 (Sep 2012)	149
CL3 for the year deemed date of possession (Sep 2013)	170
Average CL (CL1 +CL2 +CL3)	151.66
Escalation amount on COC	506
Less: 10 % cost to be absorbed	197
Balance cost allowed	309
Demand By Builder	723

In view of the of above discussion, the committee is of the view thatescalation cost of Rs. 309 per sq. feet is to be allowed instead of Rs. 723 demanded by the developer.

C. Electrification and STP Charges:

The respondent stated:

i. That vide cause 2.3 of the agreement, duly executed between the Parties, the complainant had undertaken to pay the charges towards Electrification, the demand whereof was raised while offering possession of the units to the complainants. Hence, the complainants are liable to make payments under the said head.

The clause 2.3 is reproduced hereunder for ready reference:

"The purchaser(s) shall also be liable to make the payment, if applicable, in respect of (a) electrification charges (including pro-rata cost of purchasing and installing transformers, (b) cost of installing sewerage treatment plant/effluent treatment plant/pollution control devices, and (c) additional Fire-fighting charges if any or any other facilities, services, additions as may be required or specified by the Authority."

ii. That the said payment was agreed at the stage of booking as well as well entering into Flat Buyers Agreement. Since the electrification charges were not quantifiable at the time of allotment since the company was not aware of the ESS from which the electricity connection would be provided. Similarly, with respect to Sewerage Treatment Plant (STP), it was not possible to assess the size and cost of the STP. Further, the norms pertaining to EC and STP keeps changing from time to time and it is at the stage of offering possession that the requirement as per the current norms can be met. Hence, while offering possession of the

flat, the cost under both the said heads was duly informed and explained in the letter of possession.

iii. That the total load of the complex is 4886 KVA. DHBVN vide its sales circular no. D-1/2015 dated 2/1/2015 has directed to adopt 220/33/0.4 KV system, instead of laying conventional 220/66/11 KV system, in sectors 58 to 115 Gurgaon. Hence, 33KV supply voltage was considered. It is proposed to install 2x2000 KVA transformers for the same. The details of the cost of ECC and its break-up were shared with allottees at the time of offer of possession, which is enclosed at **Annexure-21** Accordingly, the allottees of Mansions are being charged ECC at INR 64.50 per sq. ft.

iv. That like Electrification, the amount chargeable towards cost of STP could not be ascertained at the time of execution of FBA and could only be quantified at the stage of offer of possession. The company has passed on the cost of STP at INR 17 per sq. ft. to the allottees of Park Mansions. The details of the cost of STP and its break-up were shared with allottees at the time of offer of possession, which is enclosed as Annexure-F with the letter dated 05.03.2020 offering possession.

v. Thus, a total of INR 81.50 per sq. ft. was charged towards electrification & STP charges from the allottees and complainant in lead case as well.

D. Fire Fighting and Power Back-up Installation Charges:

The respondents stated that:

i. The complainant had already agreed to pay fire fighting charges and power back-up installation charges as per clause 4.18 and clause 4.30 read with clause 2.1 (f) of the FBA which are reproduced below:

"Clause 4.18 - FFC or Fire Fighting Charges shall mean proportionate charges for providing the fire fighting facilities and providing adequate provisions relating to fire fighting in the colony"

"Clause 4.30: "PBIC" or Power Back up Installation Charges shall mean proportionate charges for providing the power back up installations, purchasing of generators and related costs and expenses for the entire Colony including inside the units."

"Clause 2.1 (f) Electric Connection Charges (ECC) + Fire Fighting Charges (FF) + Power Backup installation charges (PBIC) @ Rs. 50 per sq. ft."

ii. The charges for Electric Connection Charges (ECC) + Fire Fighting Charges (FF) + Power Backup installation charges (PBIC) are

payable @ Rs. 50 per sq. ft. in terms of the clause 2.1 (f) and the same have charged accordingly from all the complainants including the lead complainant.

Recommendations (C & D):

i. The complainant in the lead has objected to the raising of demand for payment of electrification charges @INR 64.50 per sq. ft. clubbed with STP Charges, which have been calculated separately @INR 17 per sq. ft. The total demand on this account works out to INR 81.50 per sq. ft. as conveyed vide statement of accounts-cum-invoice attached to the letter offering possession dated 05.03.2020 (Annexure-21).

ii. The Committee examined the contents of the FBAs executed with the allottees of Park Mansion Prime 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 50 per sq. ft.

iii. The term electric connection charges (ECC) has been defined at clause 4.16 of the agreement 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."

iv. 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 50 per sq. ft. Therefore, the Committee concluded that the respondent has conveyed the electrification charges @ INR 64.50 per sq. ft. to the allottees in an arbitrary manner and in violation of terms and conditions of the agreement akin to the allottees of Spacio. Further, only STP charges are to be demanded from the allottees @ INR 17 per sq. ft. 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 Park Mansion Prime @ INR 17 per sq. ft.

b. The term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession

of the allottees and be charged @ INR 50 per sq. ft.in terms of the provisions of 2.1 (f). The respondent may be asked to amend the statement of accounts-cum-invoice to that extent accordingly.

E. Taxes:

The issue has been discussed in detail in case of Park Spacio and Park Generation. Hence, the recommendations of the committee made there are being reiterated.

F. Car parking charges: That the Complainant had already agreed to pay Car Parking Charges as per clause 8 of the Booking Form and clause 2.1 (e) of the duly executed Flat Buyer's Agreement. The committee observes that the allottees are to pay INR 3, 00,000.00 for car parking slot. However, it the term car parking charges has been used. This gives an impression as allotted on lease basis, whereas the car parking slot is an inseparable part of the apartment meant for exclusive use of its owner for parking. Hence, the respondent is to be directed to include the term car parking slot along with its cost in the conveyance deed to be executed with the allottees of the project.

G. 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. The Hon'ble Authority may kindly issue directions accordingly.

H. Club Membership Charges (CMC):

i. That as per clause 4.9 and clause 2.1 (c) of the FBA, the complainant has already agreed to pay CMC.

"Clause 4.9 "Club Membership Charges" or "CMC" shall mean charges to be paid by the Purchaser(s) to the seller or the Maintenance Service Provider for the usage of services of the club being built in the colony for all the occupants/residents of the Colony."

"Clause 2.1(c) Club Maintenance Charges or "CMC" @ INR1,00,000/- per Flat.

ii. That club in the project in question is operational.

Recommendations:

i. The lead complainant did not raise the issue of CMC in her complainant. However, in complainant no. 1136 of 2021, the

complainant, Mr. Rahul Shukla has raised the issue of CMC terming it as illegal on the ground that the respondent was obligated to provide it essentially under the provision of the Act no. 8 of 1975 being an amenity.

ii. The Committee observes that as per norms one community centre/club is to be provided after every 10,000 and 15,000 person. The total area of the group housing colony is 11.068 and it has been designed to accommodate a population of 2566 persons as per approved site plan/building plans. Hence, the respondent is not required to provide any site for club/community centre and club has been provided by the respondent as a special facility. Accordingly, the allottees are to pay CMC for availing this facility. It is to be operated on commercial line by the respondent company or third party on commercial lines.

iii. Notwithstanding the above observation, the Committee recommends that the club membership may be made optional as suggested in the case of Park Spacio and Park Generation and the respondent may be directed to refund CMC in any such request is received from the allottee/complainant. 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.

IV. Astaire Garden (Plotted, Sectors-70 & 70A):

Overview of the Project:

The Astaire Garden is a plotted residential colony developed by the respondent company over an area measuring 97.98125 acres in residential sector 70A, Gurugram in terms of the license bearing no. 15 of 2011 and 62 of 2021. 792 no. of plots of various sizes have been provided in the approved lay out plan of the colony. The company has proposed to construct 53 villas and 744 independent floors (G+2) on 248 plots. The construction work on 42 villas has already been completed and the rest of the villas are under construction. The respondent company has already completed construction of 726 independent floors. The current population of the colony is around 1500.

The nominee/complainant, Vidit Aggrawal has been allotted an independent floor by the respondent company. He attended the meeting of Committee held on 25.09.2021. The representatives of the respondent company were also present in the meeting. The issues discussed therein and the recommendations thereon by the Committee are as follows:

A. Builder Buyer's Agreement: The complainant stated that BBA is one-sided, biased and hugely inclined in favour of the respondent. It also compromises with the legal rights of the allottees and coercive in nature. He pleaded to ensure the interest of the allottees is not compromised in terms of the previous judgments of HARERA, Panchkula.

The respondents argued that this issue was never referred to the Ld. Committee. They further contended that the BBA was executed voluntarily between the company and the complainant before the commencement of the Act of 2016 and the Rules framed thereunder. Further, the issue qua BBA has been categorically and extensively replied to by BPTP Ltd. in its written statement in the respective complaints. Hence, the said issue needs judicial adjudication and the complainant be asked to await the final decision on the said issue by the Hon'ble Authority.

The Committee observes that the issue does not figure in the list of 13 issues to be resolved by it and the issue is to be decided at the level of Hon'ble Authority.

B. Electrification and Power Back-up:

The complainant stated that:

i. The respondent had promised a 33 KV dedicated feeder for the colony as per the BBA. However, despite passage of more than 4 years, the dedicated 33 KV feeder has still not been provided.
ii. The respondent has temporarily provided an 11 KVA tap-off line, which is prone to major voltage fluctuation and frequent break-downs causing damage to electrical equipment/ appliances.
iii. Due to frequent power-cuts, the residents are switched to DG supply by the respondent, which is charged at an exorbitant rate at INR 34.45 per unit.
iv. The respondent has charged an exorbitant amount of INR 1.5 lac for power back-up from each allottee. But the respondent has installed sub-standard and inefficient generators, which have been taken on rent and are insufficient to cater to the demand of the residents.
v. That the residents are suffering huge financial losses and also facing safety concerns due to indifferent attitude of the respondent.

In view of the above, he sought that the respondent may be directed to refund electrification charges along with interest and appropriate compensation.

Respondent:

i. That the colony, spreading over an area measuring 102.2 acres, has been designed for an ultimate power load of 9348 KW/10386 KVA. The proposal of the company has been approved by DHBVN vide memo no. 3/SE/C-EP-205 dated 23.02.2017 **(Annexure-22)** subject to the inter alia following three major terms and conditions:

   a) That the respondent shall create 33 GIS ESS, with installed capacity of 1x12.5MVA 33/11KV power transformer.

   b) The respondent shall install

      2x1000+2x750+13x630+3x400+7x160KVA 11/0.4KVA DTs.

   c) The ultimate load of 9348KW or 10386KVA for residential plotted colony shall be fed from proposed 220/33KV ESS being set-up in sector-69, Gurgaon through purposed 33 KV independent feeder with double run 3Cx400mm2 XLPE underground 33 KV cable.

ii. That the company has already set up a 33KV ESS with 1x12.5MVA capacity power transformer. Besides, 4x630KVA and 1x500KVA distribution transformers have also been installed considering the existing load in the colony.

iii. That the facility could not been energized as the 220/33KV ESS in sector-69 is still under construction and is likely to be completed by December, 2021 as per the verbal information given by the officials of HVPN.

iv. That at present the peak demand of the colony is around 900KVA. The company has arranged supply from 11KV existing feeder of DHBVN to meet the power demand to the extent 1000KVA.

v. That as per the permission granted by DHBVN vide letter dated 23.02.2017, the supply to the independent 33KV ESS was to be directly given from 220/33KV ESS through a separate 33KV bay. However, DHBVN, Hisar vide its memo no. Ch-14/SE/Comml/R-16/444/2018 dated 27.03.2018**(Annexure-23)** has mandated that in case the ultimate load of the colony is less than 15 MVA, then the builder/developer will have to create a 33KV switching station, on his own land measuring not less than 500 sq. yd., conforming to the regulations, instructions and specifications of the Nigam at his own cost. The 33KV ESS will be fed through this switching station.

vi. In compliance with the instructions referred to in the above para, a piece of land admeasuring around 500 sq. yd. has been reserved

for the switching station near to the 33 KV ESS. The general electrical layout (GELO) of the switching station stands approved by the Chief Engineer (Operations), DHBVN, New Delhi vide memo no. 02/WO/E-108/2019-20/GGN-II dated 23.03.2020(**Annexure-24**) and its estimates have been submitted for approval in that office, which are likely to be approved in the next week.

vii. That the company has planned to create a power-backup of 6000 KVA for entire township for which 4 HT DGs, each 1500 KVA capacity, shall be installed in the 33KV ESS. These DGs will be installed soon after energization of the 33KV ESS of the colony.

viii. That at present the peak power demand of the colony is around 900KVA. Considering it, the respondent company has installed 1x125KVA, 1x160KVA, 1x200KVA, 2x200KVA, 3x500KVA generators to create power back-up for maximum load of 2385 KVA to maintain a continuous power supply in the colony in terms of the provisions of the agreement.

In view of the above submissions, the respondent pleaded that the company is not responsible for delay in supplying power from 33KV ESS and adequate power back-up has been provided. Hence, the contention of the respondent is not maintainable.

Recommendations:

i. The Committee notes that the circumstances attributed to the delay in energization of 33 KV ESS explained above are beyond the control of the respondent company as the construction of 220/33 KV Grid Station in sector-69 is nearing completion. The 33 KV ESS set up by the respondent company for the colony shall be fed from this Grid Station through a 33 KV switching station to be set up by the developer near the 33 KV ESS for which a site measuring 500 sq. yd. has been reserved.

ii. In the meanwhile, the respondent company has executed an agreement with Astaire Garden Owner Association on 12th November, 2021 **(Annexure-25)**, the salient features of this agreement are:

   a. The respondent shall hand over the operation and maintenance of the services to the RWA and it has agreed to take over the same on the terms and conditions prescribed in the agreement.

   b. 33 KV switching station shall be made available within next 6 months.

In view of the promise made in the agreement, the respondent company may be directed to adhere to the timeline given in the agreement for creation of 33 KV switching station and its energization.

C. Sewage Treatment Plant Charges:

Complainant:

i. That the respondent had to provide a permanent well equipped sewage treatment plant (STP) for the colony on the deemed date of possession. However, the builder has left the society to run without a functional STP for the last 3 years.

ii. That the respondent has installed an STP of 100KLD in the year 2020 and another STP of 100KLD in 2021. These are of sub-optimal quality and function intermittently and emit foul smell. Consequently, the respondent has been disposing off the untreated waste in the open fields near the colony, thus causing serious health hazards to the society.

In view of the above submissions, he requested for refund of STP charges with an appropriate amount of interest and compensation.

Respondent:

i. That as per approved service plan, the company is to set up a STP for treating 460 KLD of black water generated from flushing use, which is 33% of the total sewage. The remaining 67% sewage, called grey water generated from domestic use, was to be directly disposed of in the main sewer line laid down by HSVP/GMDA for carrying it to CSTP for treatment.

ii. That as per the environmental clearance given by the Competent Authority vide letter bearing no. SEIAA/HR/2013/456 dated 12.07.2013 **(Annexure-26)**, the respondent is to install an STP of 1330 KLD capacity for treating an estimate sewage load of 1109 KLD for achieving zero liquid discharge (ZLD).

iii. That at present, the occupancy in the colony is about 1500 persons, and the current sewage load is about 170 KLD. The company has installed two STPs, each of 100 KLD capacity for treating the sewage. The treated sewage water is used in horticulture.

iv. That both the sewage plants are working properly. HSPCB has granted consent to operate the STP till 30.09.2021, which has been renewed by the Competent Authority till 30.09.2022 as conveyed vide letter bearing no. 329962321GUSOCTO16329112 dated 27.10.2021 **(Annexure-27)**

v. That the STPs of the designed capacity shall be installed and commissioned in accordance with the environmental clearance as and when 30% of the total estimated sewage load is achieved. If the STPs of designed capacity for treating the ultimate sewage load are installed and commissioned at the present level of population, then it will be difficult to stabilize its operation as deficient sewage load shall lead to starvation of biomass that will further lead to collapse of entire aerobic treatment mechanism. Hence, it will not be appropriate to install and commission STPs of designed capacity.

Concluding their submissions, the respondent pleaded that the present arrangement for treating the sewage in terms of the environmental clearance to achieve ZLD is adequate, and the contention of the complainant is not tenable.

Recommendations: The existing population of the colony is around 1500 persons, which is about 10% of the total population of the colony. The present discharge is around 170 KLD and the respondent company has set up two STPs, each 100 KLD capacity to treat the present sewage load. It has been taking NOC from HSPCB regularly. Hence, the technical reason given by the respondent company to install a single STP of 1330 KLD once the 30 % of the total load is achieved for establishing a full capacity STP (1330 KLD) appears genuine. However, the respondent may be directed to keep upgrading the existing STPs in commensurate with the increasing sewage load till the desired level of sewage load is achieved for establishing the main STP for the entire colony.

D. Club Charges

Complainant:

i. That the respondent has charged each allottee of INR 2 lacs for providing a state-of-the-art club spreading over 2 acres with indoor heated pool and kid's pool, jogging tracks, outdoor games, gymnasium, multi cuisine restaurants, convenient shopping center, business center, banquet hall, state of the art theatre, table tennis, badminton court, squash court, pool/billiards and high-end spa.

ii. The building of the club has not been constructed even after lapse of 5 years from the committed due date of possession. Thus, there is no space available in the colony the residents to socialize.

iii. In view of the above submissions, he requested for refund of the amount collected along with interest and sought direction to the respondent to issue fresh membership at the same tariff once the promised sanctuary club is functional.

Respondent:

i. That at present the occupancy of the colony is only 1500 persons, whereas the facility of a club is provided after a population of 10,000-15,000 as per planning norms. It will not be viable to construct a club at the present level of population.

ii. That the company commits to complete the club building and will make it functional in all respect by December 2022.

iii. That the company has provided a temporary club for meeting the requirement of the present population, which is functional as is evident from its photographs.

Recommendations:

i. In the agreement dated 12.12.2021, the respondent has promised to construct the 'sanctuary club' by December, 2022. Accordingly, respondent company may be asked to submit an affidavit before the Hon'ble Authority affirming to complete the construction of club as per the promised timeline.

ii. The Committee also recommends that the club membership may 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.

E. GST & VAT:

Complainant: As per the judgment given by Hon'ble National Anti-Profiteering Authority (NAA) Case no. 26/2020 dated 15.05.2020, GST cannot be charged if the deemed date of possession does not fall in the GST regime. As per the above-mentioned judgment, Service tax @ 15% on 25% of the total purchase price is levied, in other words Service Tax @3.75% (25% of 15%) is levied on the total price paid for the purchase, hence we request the Hon'ble committee to direct the builder to refund the excess GST collected from us.

Respondent: That the no excess GST has been collected by the M/s BPTP Ltd., hence, the Complainants are not entitled for any refund. It is submitted that M/s BPTP Ltd. is carrying on the business affairs since 2003-04, whereas the Real Estate Sector came under the purview of the provisions of Service Tax from 01.07.2012. Hence, in compliance thereof, M/s BPTP Ltd. regularly filled and is filling the Service Tax return in a strict bound manner. Thereafter, Goods and Service Tax Act 2017 ("GST") came into effect 1st July 2017 and in compliance whereof M/s BPTP Ltd. is regularly filing its GST returns.

Recommendations: *The issue has been discussed in detail in case of Park Spacio and Park Generation. Hence, the recommendations of the committee made there are being reiterated.*

F. Cost Escalation:

Complainant: the builder has cherry picked the cost inflation index and calculated the cost escalation of 20.38%. As per the judgement of HARERA, Panchkula in the case titled as Madhu Sareen & Anr. v/s BPTP Limited (31.08.2018) the base cost inflation index should start from the commencement of the BBA and should be till the deemed date of possession. Based on the calculation the applicable cost escalation should be 8.76% of which 5% must be absorbed by the builder. Hence, the applicable cost escalation is 3.76%. The calculation is submitted for kind perusal of the committee. Keeping this in view, the committee is requested to recommend to the Hon'ble Authority for refund of the extra amount charged along with interest.

B. Name of the project: Astaire Garden, Sector 70 A, Gurugram

Relevant Clause as per Agreement: The lead case complaint No. 3047 of 2020 Videet Agarwal & ORS. Versus BPTP Ltd was verified as under:

In terms of the Clause mentioned in the booking form - "Clause no.48" & in terms of the agreement "Clause 12.12" duly accepted and signed between the customer and the company, the cost escalation is to be borne by the customer. The aforesaid clauses are reproduced below for ready reference:

Builder Buyer Agreement (Clause No: 20.12)

"20.12 The Purchaser(s) understands and agrees that the sale consideration of the Unit comprises of the cost of construction rates applicable on September 1, 2010, amongst other

components. The Purchaser(s) further recognizes that due to abnormal market variation in the cost of construction i.e., cost materials, labor, and project management cost, the actual cost of the Unit may experience escalation: and may thus vary. The final cost of construction shall be calculated at the stage of completion of the project, should the variance be equal to or less than 5%, of the cost of construction, ascertained at the time of allotment, the same shall be absorbed entirely by the Seller/Confirming party. However should the cost of construction, upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s) as the case may be, as per actual calculation made by the seller/Confirming Party. The variance in the cost of construction shall be calculated on the basis of the following formula:

$\frac{\text{Rs. 17546 per sq.mt.}}{\text{Number of year (3)}} \times \frac{CL1+CL2+CL3}{CLSL} -$ Present Cost of Construction
(Rs.17546/- per Sq.ft.)/(Number of Year (3)) x (CL1+CL2+CL3)/CLSL - Present Cost of Construction
Rs. 17546/-- per sq. feet= cost of construction as on date of booking as determined by the Seller/Confirming Party
CLSL= Cost Index of CPWD on September 1, 2010, of the unit
CL1= Cost index of CPWD on September 1, 2011, of the unit
CL2= Cost index of CPWD on September 1, 2012, of the unit
CL3= Cost Index of CPWD at the time of offer for Possession of unit

On a plain reading of the above clause, the following key issues emerge to examine by the committee:

1. Ascertain the estimated cost of construction at the time of booking/at the time of the agreement, as the case may be;
2. Absorption of 5 % inflation by the developer;
3. Measurement of cost inflation based on CPWD Index;
4. Inflation benefits to be provided for the period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession;

So we evaluated each issue as follows:

1. **The First Issue is to decide the estimated cost of construction at the time of booking/at the time of agreement:**

It was observed that in the lead case, the estimated cost of construction was specifically mentioned in the agreement as to the present cost of construction. However, it may possible that in a few of the cases, the cost of construction was not specified in the agreement. In case, where the estimated cost of construction is specified in the agreement itself then the cost is to consider the cost as per the agreement executed between the developer and buyer. So in the present case, the present cost of construction was Rs. 17546/- per sq. meter. Further, in the case where the cost of construction was not specified in the agreement then the calculation should be done according to the principle set for the real estate project where cost was not specified in the agreement like "Park Spacio".

2. **The second issue is to absorption of 5 % inflation cost:**

The relevant clause no 20.12 of the said agreement is that the basic sale price is escalation-free except in the situation where the cost of construction shall be equal to or less than 5%, of the cost of construction ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. However, should the cost of construction upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s), as the case may be, as per actual calculation made by the Seller/Confirming Party.

Accordingly, no escalation charges can be levied in case the variance is equal to or less than 5%, of the cost of construction, ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. It also means that escalation up to 5 % was already accounted for in the basic price charged from the buyers. In the above context, 5% cost inflation is to be born by the promoter and the rest may be ascribed to purchasers.

3. **The third issue is identification and measurement of the cost inflation Index:**

In the agreement for calculating the variance in the cost of construction at the time of booking and at the time of completion of the project a formula has been mentioned which will be the basis for calculating the cost of escalation. The formula specified cost index of CPWD and the cost index

of CPWD which is declared on a six-monthly basis is appropriate and there cannot be any dispute about it. Even in cases, where no such formula has been prescribed the CPWD index for calculating the variation in the cost of construction will be a good guide.

4. **The fourth issue is related to the Inflation benefit period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession.**

The possession clause 5.1 of the agreement is as under:

"5.1 Subject to Force Majeure, as defined in clause 14 and further subject to the purchaser(s) having complied with all obligation under the terms and conditions of the agreement and the Purchaser(s) not being in default under any part of the agreement including but not limited to the timely payment of each and every instalment of the sale consideration including DC, Stamp duty and other charges and also subject to Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony."

It was agreed that the possession of the apartment will be given within 36 months from the date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later ("Commitment Period"). A further grace period of 180 days was agreed to apply to obtain an occupation certificate. As the builder failed to apply the OC within 180 days after the expiry of the commitment period, accordingly, is not entitled to the benefit of the grace period. So as per the above clause, the possession of the apartment should have been delivered within 36 months from the date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later.

The building plan for unit no. B-75 GF was sanctioned on 15.05.2013 and the floor buyers agreement was executed on 15.03.2012 Out of these two dates, 15.05.2013 was later and considered for identification of cut-off date.

The company offered maximum possession in the year 2017 and with a delay of almost 1 year.

The question that arises before the committee is whether the cost escalation should be allowed up to the deemed date of possession i.e., 36 months from the date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later i.e. 15.05.2013, or up to the actual date of the offer of possession i.e., 2017. As most of the complainants paid a major part of the sale consideration and there was no default on the part of the complainant in making payment to the promoter. The project has been delayed by over 1 years for no fault on the part of the complainant.

It is, therefore, fair and just that the cost escalation, should be calculated only from the d date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later i.e. 15.05.2013 up to the deemed date of delivery of possession i.e. 14.05.2016, or up to the grace period i.e. 14.11.2016. No escalation in cost can be allowed after 14.05.2016 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant.

So, on a combined analysis of all these points, the cost of inflation is to be allowed to the company as per the following calculation.

Sr. No.	Particular	Amount (Rs. In Sq. meter)
A.	Cost of Construction as of Sep 2010 (As per Agreement)	17546
B.	Percentage Cost of escalation to be absorbed by the developer	5%
C.	Cost of Escalation to be observed by the developer (In Rs) (A*B)	877.30

D.	Average CL at the deemed date of possession as per formula specified in Agreement (149+161+176.80/3)	162.27
E.	BASE CLSA at the time of booking/agreement as on August 2011 as given in the builder buyer agreement	136
F.	The difference in the average CL at the time of possession and base CLSA (E-D)	26.27
G.	% Increase in the cost up to the deemed date of possession (F/E)	19.31%
H.	Cost to be observed by the builder in percentage (H) (H * E)	5%
I.	Net increase in the cost in %	14.31%
J.	Cost Escalation demanded by Developer in per sq. feet	332.18
K.	Escalation Allowed Per sq. m (A*I)	2511.48
L.	**Escalation Allowed Per sq. ft (A*I)/10.764**	**233.32**

In view of the of above discussion, the committee is of the view that escalation cost of Rs. 233.32 per sq. feet is to be allowed instead of Rs. 332.18 demanded by the developer.

Working of Cost escalation as demanded by the company and supported by the certificate of chartered accountant is annexed as Annexure-28

Recommendation:

Escalation cost to be allowed @ Rs. 233.32 Sq. Feet

G. PLC Charges:

Complainant: The respondent has raised a demand for an added PLC for the 24m wide road amounting to INR 7,50,000/- from one of the complainants, Mr. Shyam Nandan Pandey and MINR Gauri Pandey (Case No. 495 of 2020). Besides, the respondent has illegally charged PLC amounting to INR 3, 97,105.20 for park facing allotment. However, the respondent failed to offer the same allotment as the majority of the park has been taken over by NHAI Authorities. In view of this, he sought direction to the respondent for refund of the money with interest.

Respondent: That the allegation of the complainant is false and fabricated as the respondent never raised any additional demand

amounting to INR 7,50,000/-. Rather, the company has charged PLC amounting to INR 397,105.20/- from the complainant Mr. Shyam Nandan Pandey for unit no. E-24-FF being park facing plot as per the approved layout plan of the colony. The Park has been fully developed by the respondent. The owner has paid the PLC charges and no additional demand has ever been raised by the respondent. The copy of the LoP showing the plot and the park is enclosed at **Annexure-29** Hence, the complainants must be put to strict proof to substantiate their averment.

The Committee finds that the plot referred to above faces a developed park as per the approved LoP of the colony. Hence, there appears no substance in the averment of the complainant.

H. The nominees did not raise the issues of super area, cost escalation, development charges and utility connection charges Hence, the same have not been dealt with by the Committee.

V. Amstoria (Plotted & floor , Sector-102 & 102A)

A. Physical Possession of the Plot:

Overview of the Project: The Amstoria is a plotted residential colony developed by the respondent company over an area measuring 133.705 acres in residential sector 102 and 102A, Gurugram in terms of the licenses bearing no. 58 of 2010, 45 of 2011 and 41 of 2021. Total 1108 no. of plots of various sizes have been provided in the approved lay out plan of the colony. The company has proposed to construct 28 villas and 465 independent floors (G+2) on 155 plots. The construction work of 28 villas is in progress, whereas construction work of 465 independent floors has been completed at site. The current population of the colony is around 150. The approved layout plan of the colony is enclosed as **Annexure-30.**

The nominee/complainant, Vikas Mangla has been allotted a plot by the respondent company. He attended the meeting of the committee held on 13.10.2021. The representatives of the respondent company were also present in the meeting. The issues discussed therein and the recommendations thereon by the Committee are as follows:

Complainant:

i. The respondent had offered possession of plot number C-373 vide letter dated 17.10.2017. He had already submitted the requisite documents asked for by the respondent. However, the respondent

is yet to handover the physical possession and to execute a conveyance deed of the plot.

ii. The plot has not been demarcated at site.

iii. He sought the Committee to direct the respondent for execution of the conveyance deed and handing over the physical possession of the plot in a time bound manner.

iv. The respondent may be directed to provide the details of EDC/IDC and GST calculations.

Respondent: The issue does not figure in the list of the issues to be resolved by the Committee in terms of the order 06.07.2021. Nevertheless, as directed by the Ld. Committee during the meeting held on 12.10.2021, the plot has been shown to the complainant and the steps are being taken for registration of the conveyance deed. The complainant has deposited the requisite amount for purchase of stamp papers.

The complaint was contacted telephonically by the Committee and he has informed that the registration of CD is under process.

B. GST Refund: *The issue has been discussed in detail in case of Park Spacio and Park Generation. Hence, the recommendations of the committee made there are being reiterated.*

C. **Excess charges of EDC/IDC:**

Respondent: The complainant has agreed to pay Development Charges @Rs. 4,400 per sq. yd, which includes EDC/IDC in terms of the clause 2.3 (a) of the PBA. Thus, the DC has been charged accordingly @4,400 x 225= Rs. 9,90,000/- (exclusive of taxes) and was duly remitted by the complainant on 29.04.2011, 28.05.2011, 24.09.2011 and 06.01.2012 without any demur or protest.

The respondent company did not provide the calculation details of EDC/IDC despite continuance pursuance by the committee. Hence, the Hon'ble Authority may direct the respondent company to provide the same to the complainant.

D. The nominees did not raise the other issues e.g. super area, cost escalation, STP charges, electrification charges, holding charges, club membership charges, preferential location charges, development charges and utility connection charges and power back-up charges. Hence, the same have not been dealt with by the Committee. However, in complaint no. 1894 of 2021 titled as Sushila Mallick and Salil Anand & Ors. Versus BPTP Ltd., who has been allotted an independent floor in the colony, has raised the issue of cost escalation by the respondent company. The same is discussed below:

Cost Escalation:

Relevant Clause as per Agreement:

In terms of the Clause mentioned in the agreement "Clause 12.12" duly accepted and signed between the customer and the company, the cost escalation is to be borne by the customer. The aforesaid clauses are reproduced below for ready reference:

Builder Buyer Agreement (Clause No: 12.12)

20.12 The Purchaser(s) understands and agrees that the sale consideration of the "Unit" comprises the cost of construction rates applicable on September 1, 2010, amongst other components. The Purchaser(s) further recognizes that due to abnormal market variation in the cost of construction i.e., cost of materials, labor, and project management cost, the actual cost of the "Unit" may experience escalation; and may thus vary. The final cost of construction shall be calculated at the stage of completion of the project, should the variance be equal to or less than 5%, of the cost of construction ascertained on September 1,2010 the same shall be absorbed entirely by the Seller/Confirming Party. However, should the cost of construction, upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s) as the case may be as per actual calculation made by the Seller/Confirming Party. The variance in the cost of construction shall be calculated on the basis of the following formula:

$\frac{\text{Rs. 16146 per sq.mt.}}{\text{Number of year (3)}} \times \frac{CL1+CL2+CL3}{CLSL} -$ Present Cost of Construction
(Rs.16146/- per Sq.ft.)/(Number of Year (3)) x (CL1+CL2+CL3)/CLSL - Present Cost of Construction
Rs. 16146/-- per sq. feet= cost of construction as on date of booking as determined by the Seller/Confirming Party
CLSL= Cost Index of CPWD on September 1, 2010, of the unit
CL1 = Cost index of CPWD on September 1, 2011 of the unit
CL2= Cost index of CPWD on September 1, 2012 of the unit
CL3= Cost Index of CPWD on offer of Possession of unit

On a plain reading of the above clause, the following key issues emerge to examine by the committee:

1. Ascertain the estimated cost of construction at the time of booking/at the time of the agreement, as the case may be;
2. Absorption of 5 % inflation by the developer;
3. Measurement of cost inflation based on CPWD Index;
4. Inflation benefits to be provided for the period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession;

So we evaluated each issue as follows:

1. **The First Issue is to decide the estimated cost of construction at the time of booking/at the time of agreement:**

   It was observed that in the lead case, the estimated cost of construction was specifically mentioned in the agreement as to the present cost of construction. However, it may possible that in a few of the cases, the cost of construction was not specified in the agreement. In case, where the estimated cost of construction is specified in the agreement itself then the cost is to consider the cost as per the agreement executed between the developer and buyer. So in the present case, the present cost of construction was Rs. 16146/- per sq. meter. Further, in the case where the cost of construction was not specified in the agreement then the calculation should be done according to the principle set for the real estate project where cost was not specified in the agreement like "Park Spacio".

2. **The second issue is to absorption of 5 % inflation cost:**

   The relevant clause no 20.12 of the said agreement is that the basic sale price is escalation-free except in the situation where the cost of construction shall be equal to or less than 5%, of the cost of construction ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. However, should the cost of construction upon completion of the project, vary more than 5%, then the difference in the cost shall be charged or refunded to the Purchaser(s), as the case may be, as per actual calculation made by the Seller/Confirming Party.

   Accordingly, no escalation charges can be levied in case the variance is equal to or less than 5%, of the cost of

construction, ascertained at the time of booking, the same shall be absorbed entirely by the Seller/Confirming Party. It also means that escalation up to 5 % was already accounted for in the basic price charged from the buyers. In the above context, 5% cost inflation is to be born by the promoter and the rest may be ascribed to purchasers.

3. **The third issue is identification and measurement of the cost inflation Index:**

In the agreement for calculating the variance in the cost of construction at the time of booking and at the time of completion of the project a formula has been mentioned which will be the basis for calculating the cost of escalation. The formula specified cost index of CPWD and the cost index of CPWD which is declared on a six-monthly basis is appropriate and there cannot be any dispute about it. Even in cases, where no such formula has been prescribed the CPWD index for calculating the variation in the cost of construction will be a good guide.

4. **The fourth issue is related to the Inflation benefit period up to date of the actual date of the offer of possession or up to date of committed date of the offer of possession.**

The possession clause 5.1 of the agreement is as under:

"5.1 Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing

the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony."

It was agreed that the possession of the apartment will be given within 24 months from the date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later. A further grace period of 180 days was agreed to apply to obtain an occupation certificate. As the builder failed to apply the OC within 180 days after the expiry of the commitment period, accordingly, is not entitled to the benefit of the grace period. So as per the above clause, the possession of the apartment should have been delivered within 24 months from the date of execution of the contract.

The building plan for unit no. A-145 SF was sanctioned on 05.10.2012 and the floor buyers agreement was executed on 02.02.2012 Out of these two dates, 05.10.2012 was later and considered for identification of cut-off date.

The company offered maximum possession in the year 2019 and with a delay of almost 5 year.

The question that arises before the committee is whether the cost escalation should be allowed up to the deemed date of possession i.e., 24 months from the date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later i.e. 05.10.2012, or up to the actual date of the offer of possession i.e., 2019. As most of the complainants paid a major part of the sale consideration and there was no default on the part of the complainant in making payment to the promoter. The project has been delayed by over 5 years for no fault on the part of the complainant.

It is, therefore, fair and just that the cost escalation, should be calculated only from the d date of sanctioning of the building plan or execution of the Floor Buyers Agreement, whichever is later i.e. 05.10.2012 up to the deemed date of delivery of possession i.e. 04.10.2014, or up to the grace period i.e. 04.04.2015. No escalation in cost can be allowed after 04.10.2014 because no justifiable reason has been cited or explanation offered by the respondents for such inordinate delay in offering the possession to the complainant.

So, on a combined analysis of all these points, the cost of inflation is to be allowed to the company as per the following calculation.

Sr. No.	Particular	Amount (Rs. In Sq. meter)
A.	Cost of Construction as of Sep 2010 (As per Agreement)	16146
B.	Percentage Cost of escalation to be absorbed by the developer	5%
C.	Cost of Escalation to be observed by the developer (In Rs)	807.30
D.	Average CL at the deemed date of possession as per formula specified in the agreement (149+161+181.9)/3)	163.97
E.	BASE CLSA at the time of booking/agreement (E) as on Sep 2010 as given in the builder buyer agreement	136
F.	The difference in the average CL at the time of possession and base CLSA	27.97
G.	% Increase in the cost up to the deemed date of possession	20.56%
H.	Cost to be observed by the builder in percentage	5%
I.	Net increase in the cost	15.56%
J.	Cost Escalation demanded by Developer in sq. feet	306.91
K.	Escalation Allowed in sq. meter (K) (A*I)	2512.91
L.	Escalation Allowed in sq feet (K) (A*I)	233.46

Working of Cost escalation as demanded by the company and supported by the certificate of chartered accountant is annexed as Annexure-30

In view of the of above discussion, the committee is of the view that escalation cost of Rs. 233.46 per sq. feet is to be allowed instead of Rs. 306.91 demanded by the developer.

The above report along with enclosures is placed before the Hon'ble Authority for its kind consideration.

Laxmi Kant, CA
Member

Manik Sonawane, IAS(R)
Chairman

R.K. Singh, CTP(R)
Member