BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4298 of 2023
Date of first hearing: 15.12.2023
Date of decision : 22.11.2024

1. Subhash Yadav 2. Anita Both R/o – B-97, 3rd floor, Kh. No. 1931, Vasant Kunj Enclave, Vasant Kunj, New Delhi	**Complainants**
Versus	
1. M/s BPTP Ltd. 2. M/s Countrywide Promoters Pvt. Ltd. Both Office: - M-11, Middle Circle, Connaught Circus, New Delhi-110001	**Respondents**

CORAM:	
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Shri Ashish Budhiraja	Complainants
Shri Harshit Batra	Respondents

ORDER

1. The present complaint dated 18.09.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules

and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Description
1.	Name of the project	"Spacio', Sector 37-D, Gurugram, Haryana
2.	Project area	23.814 acre
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	83 of 2008 issued on 05.04.2008 valid up to 04.04.2025.
5.	Name of the license holder	Super Belts and 4 others
6.	RERA registration number	300 of 2017 dated 13.10.2017 upto 12.10.2020
7.	Date of booking	14.08.2010 [page no. 67 of complaint]
8.	Date of execution of flat buyer's agreement b/w original allottee and respondents	04.04.2011 [page no. 31 of complaint]
9.	Endorsement in favour of complainants/allottees	23.09.2011 [page no. 64 of complaint]
10.	Unit no.	1101, 11th floor, tower-Q [page no. 39 of complaint]
11.	Unit area admeasuring	1000 sq. ft. [page no. 39 of complaint]
12.	Unit area as per offer of possession	1079 sq. ft. [page no. 86 of complaint]
13.	Possession clause	*3. Possession* *3.1 Subject to Clause 10 herein or any other circumstances not anticipated*

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		and beyond the reasonable control of the Seller/Confirming Party and only restraints/restrictions from any courts/authorities and subject to the Purchase(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller/Confirming party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the flat. The Purchaser agrees and understands that the Seller/Confirming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining the occupation certificate in respect of the Colony from the Authority. *[page 43 of complaint]*
14.	Due date of delivery of possession	14.02.2014 [Due date is calculated as 36 months from the date of booking] Grace period is allowed being unqualified. Note: In proceeding dated 22.11.2024 the due date of possession was inadvertently mentioned as 12.05.2013
15.	Total consideration	₹ 44,63,344/-

	(Basic sale price)	[as per SOA annexed with offer of possession at page 132 of reply]
16.	Total amount paid by the complainants	₹ 31,58,319/- [as per SOA annexed with offer of possession at page 132 of reply]
17.	Occupation certificate	15.01.2021 [page 127 of reply]
18.	Offer of possession	29.01.2021 [page 130 of reply]

B. Facts of the complaint

3. That being lured by the false commitments of the respondents, the complainants purchased the unit/apartment bearing no. Q-1101, eleventh floor, tower-Q in BPTP Spacio-Park Serene, sector 37 D, Gurgaon admeasuring 1000 sq. ft. from Sanjeev Kaushik. He booked the unit/flat in the project on 14.08.2010 and paid the booking amount of Rs. 2,52,500/-. The respondents executed the flat buyer agreement on 04.04.2011 of the apartment Q-1101, eleventh floor, tower-Q in BPTP Spacio, Sector 37 D, Gurgaon
4. That Mr. Sanjeev kaushik sold the unit to the complainants and endorsement in this regard has been made on 23.09.2011.
5. That as per clause 3.1 of the agreement, the respondents had agreed to deliver the possession of the flat within 36 months from the date of booking of the flat with an extended grace period of 180 days. The complainants have paid total sum of Rs. 31,58,319/- since the booking till date.
6. That complainants had not defaulted in any payment and it was made as and when the demand was raised by the respondents. That upon the various demands raised and call notice sent by the respondents, complainants made the payment from time to time.

7. That the complainants visited the project site of the respondents and was shocked to look that completion work was not even started. The respondents always gave false impression that the work is going in full mode and accordingly asked for the payments.
8. That the complainants tried to approach the respondents to get the construction of the flat completed as soon as possible to avoid any further loss of finances but it was of no use. The illegal, unethical and fraudulent actions of the respondents had led to great physical exhaustion, mental torture and financial losses to the complainants. That several emails requesting the respondents to complete the project and hand over the possession of the unit to the complainants were sent.
9. That despite receiving more than 100% approximately payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondents has failed to deliver the possession of the allotted flat to the complainants within stipulated period.
10. That after regularly following up with the respondents for the possession of the flat by the complainants, respondents on 29.01.2021 sent the offer of possession to the complainants stating that the occupation certificate has been received by them. The utter shock of the complainants the area of the unit was increased from 1000 sq. ft. to 1079 sq. ft. without prior intimation to the complainants. The area escalation cost has been imposed upon the complainants @ Rs. 2650/- per sq. ft. on the basic sale price as to the actual cost of the booking of the complainants is Rs. 2398.75/- per sq. ft. Further, the respondents has charged an additional cost escalation of Rs. 6,34,452/- from the complainants which is totally unreasonable.
11. That the complainants have paid the amount of VAT raised by the respondents. Further, respondents raised the demand of service tax and

GST which is the liability of the promoter. The promoter is shifting the burden of the taxes upon the complainants which is unreasonable.

C. Relief sought by the complainants:

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

a) Direct the respondents to hand over the possession of the flat bearing no. Q – 1101, eleventh floor, tower-Q BPTP Spacio, situated in Park Serene, Sector 37D, Gurugram, having super area of 1000 sq. ft. along with 1 car parking.

b) Direct the respondents to pay delay possession charges @ 18% p.a. from the date each payment made by the complainants.

c) Direct the respondents to execute the conveyance deed of the apartment/flat with the complainants.

d) Direct the respondents not to charge anything from the complainants which is not a part of the flat buyer's agreement.

e) Direct the respondents not to charge holding charges, maintenance or the club maintenance charges from the complainants till the actual handover of the possession of the unit.

f) Direct the respondents not to charge the cost escalation of ₹ 6,34,452/- which shown in the statement of accounts cum invoice raised at the time of offer of possession.

g) Direct the respondents not to charge the Service tax and GST which is been raised in the statement of accounts.

h) Direct the respondents not to charge the electrification and STP charges from the complainants.

i) Direct the respondents to pay the cost of present litigation amounting to ₹ 1,00,000/-.

D. Reply by the respondents

13. The respondents have contested the complaint on the following grounds:
14. That the respondents had diligently applied for registration of the project in question i.e. "Spacio" located at Sector-37D Gurugram before this Hon'ble Authority and accordingly, registration certificate no. 300 dated 13.10.2017 was issued by this hon'ble authority wherein the registration for the said project was valid for a period till 12.10.2020.
15. That pursuant to booking in the said project, a unit bearing number Q-1101, 11th floor, tower Q, tentatively admeasuring 1000 sq. ft. was allotted to the original allottees vide allotment letter dated 12.11.2010. The original allottees consciously and wilfully opted for construction linked payment plan.
16. That after the allotment of the unit in favour of the original allottees, a flat buyer's agreement dated 04.04.2011 was duly executed between the original allottees and the respondents. As per clause 3.1 of the agreement, the due date of the offer of possession of the unit was 36 months from the date booking/registration of the flat along with a grace period of 180 days, subject however, to the *force majeure* circumstances, intervention of statutory authorities and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.
17. That after the execution of the agreement dated 04.04.2011, the unit was endorsed in favour of the present complainants vide nomination letter dated 23.09.2011. The complainants had purchased the said unit only after going through the terms and conditions of the agreement dated 04.04.2011 executed between the original allottee and the respondents.

18. That the complainants being a subsequent purchaser is not entitled for any relief whatsoever. The complainants bought the unit after having due knowledge of all the facts and circumstances.
19. That the due date of delivery of the unit was subjective in nature and was dependent on the *force majeure* circumstances beyond the control of the company. The *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.
20. That the circumstances are in addition to the partial ban on construction. In the recent past the environmental pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or

the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop.

21. That the development of the unit and the project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. The demands were raised as per the agreed payment plan however, despite the same, the complainants have delayed the payment against the unit. The total sales consideration of the unit was Rs. 44,63,344/- out of which the complainants have only made payment of Rs. 31,58,319/-.

22. That it was the obligation of the complainants to make the payments as per the adopted payment plan and agreed terms and conditions of the agreement. The timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties as per clause 11.1 of the agreement.

23. The respondents were able to complete the construction of the unit and was thereby able to obtain the occupation certificate for the project on 15.01.2021.

24. That after obtaining occupation certificate from the concerned authorities, the respondents had lawfully offered the possession of the unit to the complainants on 29.01.2021. The offer of possession provided by the respondents for the possession of the unit was a valid offer of possession and all the charges levied upon the complainants by the respondents were as per the agreement executed between the parties.

25. That while offering possession of the unit to the complainants, the respondents had also provided a loyalty bonus/compensation for delay to the complainants amounting to Rs. 31,58,319/-.
26. The complainants agreed that he shall not raise any claim, whatsoever against the respondents if the said increased or decrease in the unit is not more than 15%. That in the present scenario, only an increase of 7.9% has been witnessed.
27. That the complainants, during the endorsement of the agreement dated 04.04.20111, agreed to pay the charges including but not limited to development charges, interest free maintenance charges, electric connection charges, administrative charges and any other charges which the respondents and maintenance service provider may demand for any additional services in addition to the basic sales price of the unit.
28. Hence the charges charged by the respondents in the offer of possession dated 29.01.2021 were valid charges which the complainants is under an obligation to remit in favour of the respondents as per the agreement dated 04.04.2011 and the committee report.
29. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

31. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate

Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities, and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

F. Findings on the objections raised by the respondents

F.I Objection regarding untimely payments done by the complainants.

34. It has been contended that the complainants have made default in making payments as a result thereof; the respondents had to issue various reminder letters. Clause 11 of the flat buyer's agreement provides that timely payment of instalment being the essence of the transaction, and the relevant clause is reproduced below:

> *"11.1. Time is of essence*
>
> *'Timely Payments of all amounts as per this Agreement, payable by the Purchaser(s) shall be the essence of this Agreement. If the Purchaser(s) neglects, omits, ignore, or fails, for any reason whatsoever, to pay to the Seller any of the instalments or other amounts and charges due and payable by the Purchaser(s) under the terms and conditions of this Agreement or by respective due dates thereof or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions herein contained within the time stipulated or agreed to, the Seiler / Confirming Party shall be entitled to cancel / terminate this Agreement forthwith and forfeit the booking amounts or amounts paid upto the Earnest Money and Non-Refundable Amount. The Seller/Confirming Party is not under any obligation to send reminders for the payments to be made by the Purchaser(s), as per schedule of payments and for the payments to be made as per demand by the Seller/Confirming Party."*

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

F.II. Objection regarding force majeure conditions:

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36. The respondents-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and Punjab and Haryana High Court but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 04.04.2011 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 14.02.2014. The events such as and various orders by NGT and Punjab and Haryana High Court, were for a shorter duration of time and were not continuous as there is a delay of more than seven years. The occupation certificate for the project was received on 15.01.2021. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondents- promoter. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondents cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

37. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020*** and I.As 3696-3697/2020 dated 29.05.2020 has observed that-

> *"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*

38. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 14.02.2014 and is claiming benefit of lockdown which came into effect on 23.03.2020 which indicates that the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

F. Findings on the relief sought by the complainants.

Relief sought by the complainants: The complainants had sought following relief(s):

i. **Direct the respondents to hand over the possession of the flat bearing no. Q – 1101, eleventh floor, tower-Q BPTP Spacio, situated in Park Serene, Sector 37D, Gurugram, having super area of 1000 sq. ft. along with 1 car parking.**

ii. **Direct the respondents to pay delay possession charges @ 18% p.a. from the date each payment made by the complainants.**

39. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"Section 18: - Return of amount and compensation*
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> ....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

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

> 3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and only restraints/restrictions from any courts/authorities and subject to the Purchase(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller/Confirming party, whether under this Agreement or otherwise, from time to time, **the Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the flat.** The Purchaser agrees and understands that the Seller/Confirming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining the occupation certificate in respect of the Colony from the Authority."

41. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

42. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of

booking /registration of flat. The booking of the flat was made on 14.08.2010 as per receipt on page no. 67 of complaint. Further, it was provided in the buyer's agreement that promoters shall be entitled to a grace period of 180 days for applying and obtaining the occupancy certificate from DTCP in respect of the unit and/or the project.

43. The Authority put reliance on the judgement of the Hon'ble Appellate Tribunal in appeal no. ***433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari***, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant para is reproduced below:

> *As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate.* ***So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.*** *Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."*

44. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail

the grace period so provided in the agreement for applying and obtaining the occupation certificate. Thus, the due date of handing over of possession comes out to be 14.02.2014.

45. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

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

47. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

48. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
> *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

49. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which the same is as is being granted to the complainants in case of delayed possession charges.

50. On consideration of the documents available on record and submissions made by the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents-promoter is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3 of the flat buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months from the date of booking/registration of flat. As such the due date of handing over of possession comes out to be 14.02.2014 including grace period of 6 months. The occupation certificate for the project where the subject unit

of the allottee is situated was received on 15.01.2021. Subsequently, unit was offered for possession on 29.01.2021.

51. The Authority further finds that there has been a delay on the part of the respondents/promoter in offering possession of the allotted unit to the complainants in accordance with the terms of the flat buyer's agreement dated 04.04.2011. This delay constitutes a failure on the part of the respondents/promoter to fulfill their contractual obligations, including the timely delivery of possession as stipulated in the agreement. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

52. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents/promoter is established. As such, the complainants/allottees shall be paid by the respondents/promoter interest for every month of delay from the due date of possession i.e., 14.02.2014 *(In proceeding dated 22.11.2024, the due date of possession was inadvertently mentioned as 12.05.2013 and the same is hereby rectified)* till the date of valid offer of possession (29.01.2021) plus 2 months i.e., 29.03.2021 *(In proceeding dated 22.11.2024, inadvertently DPC was allowed till 29.01.2021 and the same is hereby rectified)* after obtaining occupation certificate from the competent authority at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

iii. Direct the respondents to execute the conveyance deed of the apartment/flat with the complainants.

53. The complainants are seeking direction regarding execution of the conveyance deed of the unit in favour of the complainants. The possession of the allotted unit was offered to the complainants on 29.01.2021 after

obtaining of occupation certificate on 15.01.2021. The respondents shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

> ***6. Conveyance Deed and Stamp Duty:***
> *6.1 Subject to the Purchaser(s) making all payments as and when they fall due and providing all documents as stated herein in this Agreement to the Seller/Confirming Party, the Seller/Confirming Party, shall prepare, execute and register a Conveyance Deed to convey the title of the Flat as per the terms of the Agreement in favour of the Purchaser(s).*

54. It is to be further noted that section 11 (4) (f) provides for the obligation of respondents/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.

55. The transfer of title is clearly said to be the statutory right of the allottee as per Section 17 (1) of the Act provide for transfer of title and the same is reproduced below:

> ***"Section17: Transfer of title.***
> *17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local lows:*
> *Provided that, in the absence of any local low conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall*

be carried out by the promoter within three months from date of issue of occupancy certificate."

56. As occupation certificate of the unit has been obtained from the competent authority on 15.01.2021, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondents to execute the conveyance deed in favour of the complainants after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

iv. Direct the respondents not to charge anything from the complainants which is not a part of the flat buyer's agreement.

v. Direct the respondents not to charge holding charges, maintenance or the club maintenance charges from the complainants till the actual handover of the possession of the unit.

vi. Direct the respondents not to charge the cost escalation of ₹ 6,34,452/- which shown in the statement of accounts cum invoice raised at the time of offer of possession.

vii. Direct the respondents not to charge the Service tax and GST which is been raised in the statement of accounts.

viii. Direct the respondents not to charge the electrification and STP charges from the complainants.

57. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST &VAT, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges were involved in all

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similar cases and others pending against the respondents in this project as well as in other projects developed by them, vide orders dated 06.07.2021 and 17.08.2021 a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above-mentioned issues. The representatives of the allottees were also associated with the committee and a report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were directed to file objections to that report if any. The complainants and other allottees did not file any objections. Though the respondents sought time to file the objections but, did not opt for the same despite time given in this regard.

Holding Charges

58. The allottee has challenged ~~the authority~~ that respondents/promoter has raised demand by way of holding charges on the ground that since the project is incomplete and the offer of possession in not lawful. On the contrary, the respondents submitted that all demands have been strictly raised as per the terms of the flat buyer's agreement.

59. This issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that this issue already stands settled by the Hon'ble Supreme Court vide judgement dated 14.12.2020 in civil appeal no. 3864-3889/2020, where by the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The relevant para of the committee report is reproduced as under:

> *"**F. Holding Charges:** The Committee observes that this issue already stands settled by the Hon'ble Supreme Court vide judgement dated 14.12.2020 in civil appeal no. 3864-3889/2020, hereby the Hon'ble Court had upheld the order dated 03.01.2020*

passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The Hon'ble Authority may issue directions accordingly."

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

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

61. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra).

62. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the flat. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

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

Cost escalation

64. The complainants has pleaded that the respondents also imposed escalation cost Rs. 6,34,452/- after an increase in super area from 1000 to 1079 sq. Ft. without increasing the carpet area. The respondents in this regard took a plea that cost escalation was duly agreed by the complainants at the time of booking and the same was incorporated in the FBA. The undertaking to pay the above-mentioned charges was comprehensively set out in the FBA. In this context following clause of the FBA is noteworthy:

> *"12.11The Purchaser(s) understands and agrees that the basic sale price is escalation free except a situation where the cost of steel, cement and other construction materials increase beyond 10%. It is further agreed and understood that the steel price of Rs. 27,500/- per ton and prices of other construction material has been taken as per index price as on 01.09.2009. the company is fully authorised to revise the cost of construction materials, based on market conditions. The revision, if any, shall be intimated to the purchaser(s) at the time of possession. the purchaser(s) agrees and undertakes to unconditionally accept the price revision and pay the escalated amount without any objection or challenge whatsoever.."*

65. The authority has gone through the report of the committee and observes that as per the calculation of the estimated cost of construction for the years 2010-11 to 2013-14 and the actual expenditure of the years 2010 to 2014, the escalation cost comes down to 374.76 per sq. ft. from the demanded cost of Rs. 588 per sq. ft. No objections to the report have been raised by either of the party. Even the committee while recommending

decrease in escalation charge has gone through booking form, flat buyer agreement and their issues raised by the promoter to justify increase in cost. The authority concurs with the findings of the committee and allows passing of benefit of decrease in escalation cost of the allotted units from Rs. 588 per sq. ft to 374.76 per sq. ft. to the allottees of the project. The relevant recommendation of the committee is reproduced below:

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

66. The authority concurs with the recommendations of the committeeand holds that the escalation cost of Rs. 374.76 per sq. ft. is allowed instead of Rs. 588 per sq. ft. as demanded by the developer.

GST

67. The allottees have also challenged the authority that the respondent's promoter raised a demand by way of goods and services tax. It is pleaded by the complainants that while issuing offer of possession, the respondents had raised a demand of Rs. 1,65,000/- under the head GST which is illegal.

68. Though the version of respondents are otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project

HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate(C =A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-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%**
(E-F) (G)						

69. If any amount has already been refunded or settled down with the allottees on account of GST, it should be adjusted in the calculation. The authority concurs with the findings of the committee on this issue and order accordingly.

STP Charges

70. The allottees have also challenged the authority that the respondents/promoter raised demand by way of electrification and STP charges of Rs. 86,320/-. On the other hand, the respondents submitted that such charges have been demanded by the allottees in terms of the flat buyer's agreement.

71. The authority concurs with the recommendation made by the committee and holds that 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 respondents 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.

ix. Direct the respondents to pay the cost of present litigation amounting to ₹ 1,00,000/-

72. With respect to the aforesaid relief, the counsel for the complainants are claiming compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority

73. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. (a) **Delay Possession Charge**: The respondents are directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 14.02.2014 till the date of valid offer of possession (29.01.2021) plus 2 months i.e., 29.03.2021 after obtaining occupation certificate from the competent authority at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

(b)The arrears of such interest accrued from due date of possession till 29.03.2021 shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

(c) The respondents are directed to issue a revised statement of account after adjustment of delayed possession charges within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues, if any remains, after adjustment of delay possession charges and thereafter the respondents shall handover the possession of the allotted unit within next 30 days.

(d)The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

(e)The respondents are also directed not to charge anything which is not part of buyer's agreement.

(f)The amount if any already paid by the respondents to the complainants shall be adjusted.

I. **Cost escalation:** The authority is of the view that escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.

II. **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

III. **GST charges**: The due date of possession of the subject unit is prior to the date of coming into force of GST i.e. 01.07.2017. The authority is of the view that the respondents/promoter was not entitled to charge GST from the complainants/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements as has been held by Haryana Real Estate Appellate Tribunal, Chandigarh in appeal bearing no. 21 of 2019 titled as M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi. Also, the authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter. The promoters are entitled to charge from the allottee the applicable combined rate of VAT and service tax as detailed mention in the committee report.

IV. The respondents shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

74. Complaint stands disposed of.

75. File be consigned to registry.

V.l—

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.11.2024