



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no.:</b>	<b>1258 of 2021</b>
<b>Date of filing:</b>	<b>15.11.2021</b>
<b>Date of first hearing:</b>	<b>21.12.2021</b>
<b>Date of decision:</b>	<b>02.03.2023</b>

1. Swati Aggarwal w/o Sh. Aditya Bansal, r/o D 238 Ashok Vihar, Phase-1, New Delhi-110019
2. Saveena w/o Sh. Alok Kumar, r/o Sardarpura, Fazilka, Punjab.

....COMPLAINANTS

VERSUS

1. M/s Countrywide Promoters Pvt Ltd through its Managing Director/Authorised signatory having registered office at OT-14, 3<sup>rd</sup> Floor, Next Door, Parklands, Sector-76 Faridabad, Haryana and also at M-11, Middle Circle, Cannaught Place, New Delhi-110001

....RESPONDENT (1)

2. M/s BPTP Ltd through its Managing Director /Authorised signatory having registered office at OT-14, 3<sup>rd</sup> Floor, Next Door, Parklands, Sector-76 Faridabad, Haryana and also at M-11, Middle Circle, Cannaught Place, New Delhi-110001

....RESPONDENT(2)

**CORAM:** Dr. Geeta Rathee Singh  
Nadim Akhtar

**Member**  
**Member**

**Date of Hearing:** 02.03.2023

**Present:** Mr. Tarun Singhal & Mr. Mohit Sondhi, Counsel for the  
Complainants through video conference  
Mr. Hemant Saini, Counsel for the respondents.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 15.11.2021 has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
- A. UNIT AND PROJECT RELATED DETAILS**
2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:



S.No.	Particulars	Details
1.	Name of the project	BPTP District 1 Block-B/BPTP Nest 81A, Sector-81, Faridabad, Haryana
2.	RERA registered/not registered	Registered vide HRERA-PKL-158-2019
3.	Unit no.	Plot no. B-46
4.	Unit area	145.26 sq. yd.
5.	Date of booking	21.09.2019
6.	Date of allotment	08.11.2019
7.	Date of builder buyer agreement	07.02.2020 with Original allottee Sh. Surender Kumar. Allotment rights purchased by complainants vide agreement to sell dated 21.12.2020.
8.	Date of nomination in favor of complainants	22.02.2021
9.	Deemed date of possession	30.06.2024
10.	Basic sale price	₹75,53,520/-
11.	Amount paid by complainant	₹66,75,060/-
12.	Offer of possession	21.08.2021
13.	Occupation Certificate /Completion Certificate	Not received.

### B. FACTS OF THE COMPLAINT

3. That, one Surender Kumar s/o Shriram r/o 1548 gali no. 1 near Purani Chungi, Kheri Kalan, Faridabad, New Baselwa Colony old Haryana-121002 had applied to the respondent no. 1 for allotment of residential


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plot in project BPTP District-1, Block-B, Sector-81, Faridabad and was subsequently allotted a residential plot bearing no. B-46 admeasuring super area of 145.260 square yards vide allotment letter dated 08.11.2019 for total price Rs 75,96,572/- with customer id 157100 and payment plan as per the details provided in agreement for sale dated 07.02.2020 in buyers agreement.

4. That later on Mr. Surender Kumar i.e. the original allottee expressed his interest in selling the plot and upon some mutual terms and conditions complainants agreed to buy it.
5. That on 01.02.2020, respondent no. 1 issued the statement of account as on 18.12.2020 unit no. b-46 BPTP District, Block-B, Sector-81, Faridabad relating to Mr. Surender Kumar reflecting total net cost of plot- 75,96,572/-, called-54,53,000/-, received-23,89,400/- and balance- 30,63,600/- .
6. That on 08.11.2019, buyers agreement was signed by the original buyer i.e. Surender Kumar and Countrywide Promoters Pvt Ltd.
7. That relying upon the statement of payments and balance sheets of respondent, thereafter on 21.12.2020, complainants upon the mutual terms and conditions agreed to purchase the plot no. B-46 from Mr. Surender Kumar vide agreement to sell dated 21.12.2020. Respondent no.1 gave the acknowledgement of ownership transfer vide letter dated 04.02.2021. On the said date the respondent no. 1 also issued the

verification sheet for ownership transfer to the complainants upon the payment of prescribed fee of Rs 3100/- by the complainants.

8. That on 22.02.2021, respondent no. 1 issued the nomination in respect of plot no. B-46 in favor of complainants and also issued the new customer code 159849 and endorsed the booking/allotment of the said unit in the name of complainants with immediate effect. Respondent no. 1 also acknowledged the receipt of Rs 52,88,306/- without interest till date. Accordingly, it is admitted by respondent no. 1 that they have received Rs 52,88,306/- out of total cost of plot Rs 75,96,572/-.
9. That on 11.05.2021, complainants received a demand letter vide an email from respondent no. 1 end for making the outstanding payment of Rs 11,32,186/- to which the cheque dated 19.06.2021 was issued in the favor of respondent no. 1 and said amount was duly cleared. Accordingly, total amount received at respondent's end was Rs 64,20,492/-, out of Rs 75,96,572/-.
10. That on 23.08.2021, complainants got an email from respondents whereby demand of the outstanding amount of Rs 27,81,583/- was raised instead of correct figure of Rs 11,33,028/- mentioning therein last date to make payment as 06.09.2021. Further, complainants received a letter dated 21.08.2021 bearing subject-"offer of possession for plot no. B-46 alongwith statement of account cum invoice".



11. That various communications were sent to respondents regarding the illegal demands. Respondent in its reply stated that the illegal demands are raised on the pretext that some amount is due from the original allottee.
12. That complainants are ready to pay the balance amount which is Rs 9,24,562/- according to original balance sheets. In this regard a legal notice dated 26.09.2021 was sent to respondents for giving rightful fresh offer of possession mentioning the correct amount payable within a period of one month.
13. That to utter surprise of the complainants on 11.11.2021, the respondents through an email sent the cancellation letter in respect of booked unit no. B-46. Hence, the present complaint.

**C. RELIEF SOUGHT**

14. The complainants in their complaint have prayed that the respondent be directed to:
  - (a) The cancellation of the plot by the respondents may kindly be stayed/revoked.
  - (b) The rightful offer of possession of plot with correct terms and amount.
  - (c) The rightful possession of the allotted plot should be given to the complainant.
  - (d) The interest on delayed possession to the tune of 18% should also be



given to the complainant from the date of delay till to the date of handing over of possession of the plot.

(e) The compensation on account of harassment, pain, suffering and mental agony should also be given to the complainant to the tune of Rs 20,00,000/-.

(f) The litigation expenses to the tune of Rs 1,00,000/-

(g) Any other relief, which this authority may deems fit.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 08.04.2022 pleading therein:

15. That, Mr. Surender Kumar (original allottee), approached respondent No. 1 for booking of a Plot in year 2019 in the project being developed by the respondent No. 1 viz., " BPTP District 1 Block B" situated at Sector 81, Faridabad (Haryana). The Original Allottee was duly allotted plot no. B-46 admeasuring 145 sq. yd. Thereafter, Agreement for Sale was executed between the Original Allottee and the respondent No. 1 on 07.02.2020. The Original Allottee vide his nomination letter dated 22.02.2021 endorsed the plot in question in favor of the complainants. The respondent No. 1 issued offer of possession for the said plot in question on 21.08.2020. The complainants failed to pay the outstanding amount and take possession of the Plot. The complainants proceeded to file this

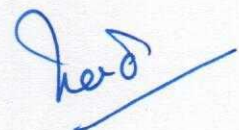


vexatious complaint even after the respondent No. 1 completed all its obligations as per the agreement to sale.

16. That the complainants are defaulter under Section 19(6) and 19 (7) of the RERA Act,2016. Complainants failed to clear their outstanding dues despite repeated reminders that were issued by the respondent no.1 on 22.09.2021 and 07.10.2021. Further, the possession of the plot was offered to the complainants on 21.08.2021 but the complainants did not clear their pending dues whereas as per Section 19 (10) of the Act the allottee is bound to accept the possession within two months. Due to non-payment of outstanding dues, the respondent no. 1, as per clause 12.21 of the agreement to sale, has no option but to cancel the said booking vide termination letter dated 11.11.2021.
17. That, cheques tendered by the original allottee on 29.06.2020 and 05.08.2020 were not encashed due to insufficient funds and said fact came to light to the respondent no. 1 post the transfer when the same was reflected in the account statement of respondent no.1. In this regard, respondent no.1 sent the intimation letter dated 02.08.2021 to the original allottee but got no response.

**F. ARGUMENTS OF COMPLAINANTS AND LEARNED COUNSEL FOR RESPONDENTS.**

18. During oral arguments, complainants had insisted upon fresh offer of possession of plot booked by respondent with correct figures/amount





alongwith delay interest. In rebuttal, learned counsel for the respondent reiterated arguments as were submitted in written statement. Learned counsel for respondent further stated that respondent is ready for allotment of any other alternative unit in the completed project.

**G. JURISDICTION OF THE AUTHORITY**

19. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**G.1 Territorial Jurisdiction**

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Faridabad district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

**G.2 Subject Matter Jurisdiction**

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the



association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

#### Section 34-Functions of the Authority

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

So, in view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

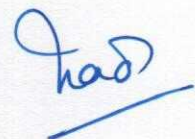
#### **H. ISSUES FOR ADJUDICATION**

20. Whether the complainants are entitled to the reliefs prayed by them?

#### **I. FINDINGS OF THE AUTHORITY ON THE OBJECTIONS RAISED BY RESPONDENT**

##### **I.1 Objection regarding the already paid amount by complainants.**

21. The respondent has taken a stand that cheques tendered by the original allottee dated 29.06.2020 and 05.08.2020 amounting to Rs 11,34,000/- were not encashed due to insufficient funds. Same came to light of respondent no.1 post the transfer of allotment rights to the present complainants. In this regard, an intimation letter dated 02.08.2021 was sent to original allottee at his address but no response with respect to the



same was received by the respondent. Complainant's stand is that they have purchased the allotment rights of plot after duly verifying the fact of payment received by the respondent no.1 from original allottees. Now respondent cannot force them to make said payment.

22. It is observed that complainants had purchased allotment rights of plot in question vide agreement to sell dated 21.12.2020 annexed as Annexure C-3 to complaint. Following which nomination letter dated 22.02.2021 was issued by the respondent no. 1 in favor of complainants duly acknowledging the payment of Rs 52,88,306/- from original allottee. Now, the respondent is raising issue of non-encashment of cheques dated 29.06.2020 and 05.08.2020 amounting to Rs 11,34,000/- on 02.08.2021 whereby fact of payment was duly acknowledged by respondent itself on 22.02.2021. In this regard, Authority observes that respondent cannot claim non-encashed amount of original allottee from complainants as they had acted after duly verifying the facts/payments from respondent. However, respondent is at liberty to avail legal remedy against the original allottee to recover the amount of Rs 11,34,000/-.

**J. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT**

23. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:



(i) That the respondent no. 1 issued offer of possession dated 21.08.2021 to complainants demanding an amount of Rs 31,59,583/-. Fact of non-receipt of completion certificate for the plot in question was submitted by ld. counsel for respondent during the hearing. Complainants had not accepted said offer due to illegal demands of Rs 31,59,583/- and therefore allotment of plot was terminated vide letter dated 11.11.2021. On perusal of record, it is observed that impugned offer of possession dated 21.08.2021 was not a valid offer of possession on account of non-receipt of completion certificate. Hence, complainants were not bound to accept the same. Respondent who is already in receipt of 90% of payment towards total sale consideration of plot in question has acted unreasonably by terminating said allotment. Therefore, termination letter dated 11.11.2021 stands quashed.

(ii) Further, complainants are seeking rightful offer of possession of plot with correct figures/amounts alongwith delay interest. It is pertinent to mention here that as per clause 10.1 of BBA dated 07.02.2020, the respondent was duty bound to deliver possession upto 30.06.2024. Said date has not yet lapsed. Thus, the present complaint for this



particular relief is pre-mature and cannot be dealt with at this stage.

24. The complainants are seeking compensation on account of mental harassment and agony, compensation under Section-12 of RERA Act, 2016 and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### **K. DIRECTIONS OF THE AUTHORITY**

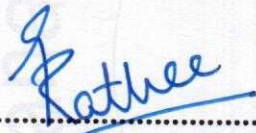
25. The Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:



(i) Respondent no. 1 is directed to restore the allotment of plot no. B-46 in question in favor of complainants without claiming amount of Rs 11,34,000/- due towards original allottee and to issue offer of possession to the complainants as and when completion certificate stands received from the concerned authority.

(ii) A period of 30 days is given to the respondent to comply with the directions given in this order as provided in provisions of Haryana Real Estate (Regulation & Development) Act, 2016 failing which legal consequences would follow.

26. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



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**Dr. GEETA RATHEE SINGH**  
**[MEMBER]**



.....  
**NADIM AKHTAR**  
**[MEMBER]**