

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

Order pronounced on:	11.08.2023
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NAME OF THE BUILDER		BPTP LTD. & COUNTRYWIDE PROMOTERS PVT. LTD.	
PROJECT NAME		BPTP AMSTORIA	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/7154/2022	Samridhi Goyal and Bhavna Goyal V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta  Sh. Harshit Batra
2.	CR/7155/2022	Bhavna Goyal and Samridhi Goyal V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta  Sh. Harshit Batra
3.	CR/7159/2022	Harshit Goyal and Bhavna Goyal V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta  Sh. Harshit Batra
4.	CR/7160/2022	Sandeep Goyal and Samridhi Goyal V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta  Sh. Harshit Batra
5.	CR/7163/2022	Bhavna Goyal and Sandeep Goyal V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta  Sh. Harshit Batra

6.	CR/7166/2022	Paresh Singla V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta Sh. Harshit Batra
7.	CR/7167/2022	Paresh Singla V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta Sh. Harshit Batra
8.	CR/7168/2022	Punam Singla V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta Sh. Harshit Batra
9.	CR/7169/2022	Paresh Singla V/s Countrywide Promoter Pvt. Ltd. and BPTP Ltd.	Sh. Rajan Kumar Hans and Sh. Rahul Gupta Sh. Harshit Batra

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**
**ORDER**

1. This order shall dispose of all the 9 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'BPTP AMSOTRIA' being developed by the same respondent promoters i.e., M/s BPTP Ltd. & M/s Countrywide Promoters Pvt. Ltd.
- The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	<b>BPTP LTD. &amp; COUNTRYWIDE PROMOTERS PVT. LTD. "BPTP AMSTORIA" Sector-102, Gurugram.</b>				
Possession Clause	BBA not executed				
Completion certificate	03.10.2017 [pg. 45 of reply]				
Due date	Not calculated as the BBA has not been executed by the parties.				
Relief Sought	<ol style="list-style-type: none"> <li>Direct the respondent to quash the termination letter of the allotted plot and subsequently, execute the BBA, and accept the payments for pending instalments.</li> <li>Direct the respondent to execute the conveyance deed and grant possession of the allotted plot in the project "Amstoria".</li> <li>Alternatively, to buy back the plot no. D - 26 on the current market value.</li> <li>Direct the respondent to pay delay possession charges from the date of payment till the date of possession.</li> </ol>				
Complaint No	Unit No.	Date of allotment letter	Termination letter & Third-party rights	Total consideration (TC) & Amount paid (AP)	Sale paid
CR/7154/2022	<b>A-113</b> (Page no. 42 of complaint)	30.03.2022 (Page no. 42 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights created on 04.11.2022	TC- ₹ 5,40,94,045/- AP- ₹ 54,09,405/-	
CR/7155/2022	<b>A-119</b> (Page no. 34 of reply)	28.03.2022 (Page no. 34 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights not created	TC- ₹ 5,34,75,020/- AP- ₹ 53,46,405/-	

CR/7159/2022	<b>A-112</b> (Page no. 40 of complaint)	28.03.2022 (Page no. 40 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights created on 04.11.2022	TC- ₹ 5,22,39,993/- AP- ₹ 52,21,325/-
CR/7160/2022	<b>D-27</b> (Page no. 41 of complaint)	31.03.2022 (Page no. 41 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights not created	TC- ₹ 4,93,90,215/- AP- ₹ 49,39,250/-
CR/7163/2022	<b>D-28</b> (Page no. 41 of complaint)	31.03.2022 (Page no. 41 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights not created	TC- ₹ 4,93,90,215/- AP- ₹ 49,40,000/-
CR/7166/2022	<b>A-117</b> (Page no. 46 of complaint)	28.03.2022 (Page no. 46 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights created on 04.11.2022	TC- ₹ 5,34,75,020/- AP- ₹ 54,09,512/-
CR/7167/2022	<b>A-122</b> (Page no. 47 of complaint)	28.03.2022 (Page no. 47 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights created on 16.01.2023	TC- ₹ 5,34,75,020/- AP- ₹ 54,09,512/-
CR/7168/2022	<b>D-26</b> (Page no. 46 of complaint)	31.03.2022 (Page no. 46 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights not created	TC- ₹ 4,93,90,215/- AP- ₹ 50,98,500/-
CR/7169/2022	<b>D-29</b> (Page no. 46 of complaint)	31.03.2022 (Page no. 46 of complaint)	29.06.2022 *3 <sup>rd</sup> party rights not created	TC- ₹ 4,93,90,215/- AP- ₹ 49,39,022/-

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the

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

5. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/7159/2022 titled as Harshit Goyal & Bhavna Goyal Vs. M/s Countrywide Promoters Private Limited. & M/s BPTP Ltd.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.

**A. Unit and project related details**

6. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, date of buyer's agreement, termination etc, have been detailed in the following tabular form:

**CR/7159/2022 titled as Harshit Goyal & Bhavna Goyal Vs. M/s Countrywide Promoters Private Limited. & M/s BPTP Ltd.**

Sr. No.	Particulars	Details
1.	Name of the project	BPTP Amstoria, Sector 102, Gurugram, Haryana.
2.	Unit no.	A-112 (Page no. 40 of complaint)
3.	Unit admeasuring	495.14 square yards (Page no. 40 of complaint)
4.	Date of execution of agreement for sale	Not executed

5.	Possession clause	NA
6.	Due date of delivery of possession	NA
7.	Allotment Letter	28.03.2022 (Page no. 40 of complaint)
8.	Total sale consideration	Rs. 5,22,39,993/- (As per payment plan on page no. 41 of complaint)
9.	Total amount paid by the complainant	Rs. 52,21,325/- (As alleged by the complainant)
10.	Part completion certificate	03.10.2017 (Page no. 45 of reply)
11.	Offer of possession	Not offered
12.	Termination Letter	29.06.2022 (Page no. 51 of reply)

**B. Facts of the complaint**

7. The complainants have submitted as under:

- a. That a real estate agent named Mr. Kawarpal Singh who is also a channel partner of the respondents, introduced the complainant and other allottees with the project and the respondents, pursuant to which the complainant and other allottees visited the site of the project "BPTP Amstoria" on 10.03.2022 and suggested 9 plots measuring 495 sq. yards including 5 plots in block A (plot no. A-112, A-113, A-117, A-119, A-122 and 4 plots in block D (plot nos. D-26, D-27, D-28 and D-29). The respondents informed the complainant and other allottees that the project is an ultra-luxurious project, and the

respondents are providing various amenities like club house, tennis court etc. The respondents further lured the complainant and made several promises pertaining to the timely possession and luxuries provided in the project. the complainant being impressed with the project, decided to book a plot in the above-mentioned project.

- b. It is important to mention that out of the above 9 plots, 7 plots bearing plot no. A - 112, A - 113, A - 117, A - 119, A - 122, D - 26 and D - 29 have existing structures/buildings/floors on them. When the complainant and other allottees enquired about the same from the respondents, they assured the complainant that they have obtained the no objection certificates (NOC's) from all the existing allottees of floors built on these 7 Amstoria plots and will produce the same after booking the plots. The respondents assured that these existing structures/buildings/floors will be demolished latest by 31.05.2022 and before making any further payments and vacant plot will be allotted to the complainant. The respondents usually given 60 days' time for payment of next instalment, however in these bookings, the respondents specifically gave time of 90 days as they needed more time for demolition of existing structures/buildings/floors. On these representations of the respondents, the complainant booked plot no. A-112 and other allottees booked the remaining 8 Amstoria plots and were confirmed in meeting with Mr. Anish Nanda who was Assistant Vice President, Sales of the respondent no. 1 at the time of booking of the Amstoria plots. Mr. Anish Nanda has resigned from the respondent no. 1 company. Further, at the time of meeting of Mr.

Sandeep Goyal with Mr Anish Nanda, Mr. Harinder Dhillon was on conference call.

- c. That a payment plan was shared by the respondents with the complainants. The complainants had signed booking form and alongwith paid the booking amount according to the payment plan, the receipts of which were duly issued and further, allotment letter was also issued on 28.03.2022 and after that the cheques of the complainants were presented. The complainants had paid an amount of ₹ 26,11,125/- on 31.03.2022 and an amount of ₹ 26,10,200/- on 25.04.2022. The complainants have paid a total amount of ₹ 52,21,325/- which is approx. 10% of the total sales consideration.
- d. That the complainant received a letter dated 12.04.2022 from the respondent, wherein the respondent had enclosed 2 sets of BBA to be executed with respect to the plot allotted to the complainant. That the complainant and other allottees enquired with the respondents regarding the status of demolition on existing structures on some of the plots and requested the respondents to provide NOC from earlier allottees of these plots. The respondents again assured the complainant, that demolition of existing structures would be completed on or before 31.05.2022. The complainant and other allottees were worried about the existing structures on the aforesaid plots as these existing structures acted as encumbrances and therefore, the title of the plots was not clear and the complainant could not, in good faith, sign the builder buyer agreement with the existing encumbrance.



- e. That the complainant had received a demand letter dated 02.06.2022 from the respondent wherein the respondent has raised the demand for the next instalment of 25% of the TSV as per the payment schedule. It is pertinent to mention that as per the respondents the next instalment was due within 90 days of the booking and the bookings were confirmed by the respondents on 28.03.2022. Therefore, the last date as per the payment schedule was 27.06.2022.
- f. That on 10.06.2022, Mr. Sandeep Goyal visited the site of the Amstoria plots and to the utter shock, the existing structures were still not demolished. That the complainant was disappointed with the false assurances given by the respondents regarding demolition of the existing structures. It is pertinent to mention that the respondents without fulfilling their part of the promise of demolishing existing structures on the 7 Amstoria plots, raised demand for next instalments.
- g. That in the evening of 21.06.2022, the respondents proceeded with the process of demolition of the existing structures/buildings constructed on the Amstoria plots. Just immediately after the start of the demolition drive, the residents of the society created hue and cry and informed the local police station about such demolition. The Police officers of the concerned police station reached at the site where the demolition was being carried out and stopped the demolition process. The residents also informed the DTCP, (Department of Town and Country Planning) Gurugram and DTCP stayed the demolition process till further orders.

- h. That on 22.06.2022, the Mr. Sandeep Goyal had received an email from the respondent no. 1 wherein they had asked the complainant and other allottees to execute a settlement agreement attached with the email and to submit PDC's for the next instalments. The complainant and other allottees were shocked to see the contents of the settlement agreement, as it was an arbitrary and one-sided settlement agreement, and it did not contain the terms which were finalized in the meeting dated 21.06.2022. Further, the complainant and other allottees were forced to waive off all their rights even for future legal actions regarding the plots.
- i. That the respondents never disclosed to the complainant about the stay on demolition passed by the Ld. Civil Judge, Gurugram and were repeatedly asking for further instalments. The complainant got to know about the same from outside sources and the news of demolition was reported in newspapers as well. That on 27.06.2022, Mr. Sandeep Goyal received a conference call, in which he confronted Mr. Harinder Dhillon and Ms. Anjali Aullack (DGM, CRM) of the respondent no. 1 regarding the issue of stay orders and they both committed to the Mr. Sandeep Goyal, that the complainant and other allottees have to pay the next instalments only for those plots on which there are no existing structures/building/floors and the complainant and other allottees do not have to pay any further amount on the 7 Amstoria plots on which there are existing structures, till the time demolition is carried on these plots. Mr. Sandeep Goyal agreed to the above proposal on the conference call itself and it was agreed by Mr. Harinder Dhillon to provide a

settlement deed in this regard. It is significant to mention that the respondents did not send the above settlement deed.

- j. With respect to the Amstoria plots it was reiterated by Mr. Sandeep Goyal that on Plot No. A - 112, A - 113, A - 117, A - 119, A - 122, D - 26 and D - 29 there are encumbrances in the nature of existing structures, and it was promised by the respondents that these structures will be demolished latest by 31.05.2022. Further, Mr. Sandeep Goyal mentioned about the stay orders on demolition operative on 7 Amstoria plots by Gurugram Civil Court and DTCP and that there was no clarity on when these structures/buildings/floors will be demolished. So, when the respondents themselves have no clarity on the above issue, how they can ask for further payments on 7 Amstoria Plots.
- k. It was assured to the complainant and other allottees that the respondents will be provided with NOC's from allottees of floors built on these 7 Amstoria plots and the complainant and other allottees were yet to receive the same. Therefore, it was stated that the respondents cannot force the complainant and other allottees to pay instalments for 7 Amstoria plots till the time stay orders on demolition were vacated and existing structures are demolished. The complainant was willing to pay the instalments as per schedule, once the stay orders get vacated and existing structures/buildings/floors were demolished.

**C. Relief sought by the complainants:**

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

- a. To quash the termination/cancellation dated 29.06.2022 of the allotted plot A-112 and subsequently, to execute BBA, to accept payments for pending instalments, to execute conveyance deed and to grant possession of the plot no. A-112 in the project 'Amstoria' situated at Sector-102, Gurugram, Haryana to the complainant.
  - b. Alternatively, to buy back the plot on the current market value.
  - c. Alternatively, to allot a plot of similar size in the project Amstoria at the initial rate of booking.
  - d. Direct the respondent to pay delay possession charges from the date of payment till the date of possession.
9. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondents.**

10. The respondents have contested the complaint on the following grounds in the combined reply dated 06.02.2023:
- a. The complainant booked the unit on 28.03.2022 in the real estate project of the respondents known under the name and style of "Amstoria" at Sector 102, Gurugram, Haryana. In pursuant to the same, the complainant made the payment of booking amount of ₹ 26,11,125/- vide cheque no. 327643 dated 31.03.2022.
  - b. That, consequently, an allotment letter dated 28.03.2022 provisionally allotting plot no. A-112 tentatively admeasuring 495.14 sq. yards with the total sale consideration of ₹ 5,49,60,540/- was issued to the complainant.

- c. That at this instance, it is pertinent to bring to light of the Ld. Authority on the fact that the complainant was offered a booking discount of ₹ 27,20,547/- subjects to the condition that the payment plan shall be adhered to. This is also evident from the fact that the allotment shows the value of the unit and thereafter notes that charges are to be paid as per the payment schedule. That in case of any delay whatsoever in making the payment against the unit, strictly as per the time-linked payment plan, no discount was liable to be paid to the complainant. The present case shows a sheer failure of part of the complainant to discharge their obligation of timely payment and hence, the facts and circumstances of the present case do not warrant the discount. That offer of discount being a conditional offer is bound to be rescinded. The same was categorically agreed between the parties.
- d. That, thereafter, vide cover letter dated 15.04.2022, the complainant was sent two copies of the builder buyer's agreement for execution. However, the complainant miserably failed in executing the same and fulfilling its obligations. The complainant was also requested vide email dated 11.04.2022 and 16.04.2022 to complete the necessary formalities for registration of the buyer's agreement, which was also not complied with.
- e. That the complainant as per the time linked payment plan were bound to make the payment of 25% "within 90 days of booking", i.e., by 28.06.2022. Consequently, a payment request letter was sent on 02.06.2022 raising the demand of ₹ 1,30,62,672/-.

- f. That the complainant willingly, and voluntarily failed to discharge their obligations as per allotment letter of making timely payment of the called instalment and executing the agreement. It needs to be categorically noted that the obligation of executing the buyer's agreement and making the due payment strictly as per the payment plan is also recognized in the Real Estate (Regulation and Development) Act, 2016 under sections 13, 19(6) and 19(7). However, on the other hand, the respondents have duly fulfilled all the obligations and responsibilities levied by the competent authorities. It is a matter of fact and record that the completion certificate has already been attained on 03.10.2017 vide memo no LC 2330 Vol III PA (SN) 2017/24885 and buyers' agreement was sent to complainant for execution which complainant refrained to sign.
- g. That the respondents had also sent a reminder email dated 08.06.2022 reminding the complainant her/his obligation of making the payment as per the chosen payment plan.
- h. That the respondents, in order to settle the alleged issues amicably shared a draft settlement deed with the complainant on the basis of a mutual discussion held with the complainant. However, the complainant failed to execute the said settlement deed and started coercing upon the company officials to amend the agreed and accepted payment plan because the complainant had no financial capacity to make the payment and as stated by him that "there is no buyer interest and no other investor is ready to invest in these plots" which clearly shows that the complainant were not a serious buyer but were flippers who thought that they will sell the plots only after

paying booking amount and earn a windfall. At this instance, this is pertinent to note that the complainant herself had made the bulk booking of 9 plots in two projects of the respondents and no other buyer had ever come forward to clear the dues and when the plan of the complainant to sell the plots in open market did not work, he stopped the payment.

- i. That the conduct of the complainant made it evident that they are not interested in making the payment. That due to non-payment and continuous default of the complainant, and the highly malafide conduct of the complainant by refraining from execution of buyer's agreement, the unit was finally terminated on 29.06.2022.
  - j. That along with the termination of the unit, on 29.06.2022, the complainant was requested to return the original documents and were offered the complete refund of the amount paid, however, the complainant failed to collect the same and did not return original document asked for. It had been clarified that the complainant is left with no right, claim, or interest and the respondents were free to deal with the said plot in any manner as it deems fit and proper in its sole and absolute discretion. Thereafter, follow up emails dated 01.08.2022, and 15.09.2022 were sent to the complainant, despite which, the complainant failed to collect the same. The email dated 29.06.2022 requesting the complainant to collect the refund cheques and return the original receipts.
  - k. All other averments made in the complaints were denied in toto.
11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of those undisputed documents and submissions made by the parties.

12. Written submissions are also filed by both, complainants and respondents on 12.06.2023 & 21.07.2023 respectively.

**E. Jurisdiction of the authority**

13. 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**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

15. 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) 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.*

16. 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 relief sought by the complainants.**

**F.I. To quash the termination/cancellation dated 29.06.2022 of the allotted plot A-112 and subsequently, to execute BBA, to accept payments for pending instalments, to execute conveyance deed and to grant possession of the plot no. A-112 in the project 'Amstoria' situated at Sector-102, Gurugram, Haryana to the complainant.**

**F.II. Alternatively, to buy back the plot on the current market value.**

**F.III. Alternatively, to allot a plot of similar size in the project Amstoria at the initial rate of booking.**

**F.IV. Direct the respondent to pay delay possession charges from the date of payment till the date of possession.**

17. All the above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. The authority while embarking upon the requisite details available on record and arguments advanced by the counsels appearing on either side, the main issue that fall for consideration is whether the said termination dated 29.06.2022 is valid or not?

- a. For introductory purposes, the authority indicates that the complainants were allotted plot no. A-112, Block-D, in the residential colony project of the respondent namely "Amstoria" vide letter dated 28.03.2022. In pursuance to this the complainants paid an amount of ₹ 52,21,325/- against the total sale consideration of ₹ 5,49,60,540/-. According to the payment plan annexed with the allotment letter dated 28.03.2022, 25% of the TNC was to be made within 90 days of booking. Thereafter, the next instalment of 25% of the TNC was to be made within 4 months of booking. Lastly, 40% of total price (including stamp duty, registration charges etc.) was to be paid within 6 months of booking. Also, on 12.04.2022 the complainants received 2 sets of BBA for execution inter-se parties. The counsel for the complainants advanced the argument in the court that out of the 9 plots booked by the complainants 7 plots had structures upon those plots, and the respondents were liable to demolish the said structures and then hand over the plots to the complainants. Further the respondents in their reply relies upon the clauses of the only binding agreement between the parties i.e., the application form dated 31.03.2022 that according to clause 3 of the said application form the aggregate amount to the extent of 20% (twenty percent) of the total price shall always be treated as the earnest money and as per clause 4 the applicant(s) understands and agrees that the plot is being strictly sold on an "*as is where is basis*" and that the applicant(s) has visited and physically inspected the plot.
- b. Further, the complainants in their complaint rely upon the email dated 26.06.2022 wherein it is requested by the complainants to

demolish the structures made upon the said plots by 31.05.2022. Furthermore, it was also brought to the notice of the complainants that after the demolition process was started the residents of Amstoria filed a suit for permanent and mandatory injunction before the Civil Judge, Gurugram and on 24.06.2022 the interim injunction was granted by the court and the respondents were further directed to maintain status quo on demolition till next date of hearing. The respondents in their reply specifically rebutted the aforesaid contentions of the complainants by stating that the said order dated 24.06.2022 on which their complaint place reliance is an ex-parte order which was effective for 17 days and the same was reversed by the Ld. Court vide order dated 11.07.2022 wherein the injunction application was dismissed, and the stay order was vacated. Hence any reliance placed on the same is without merit and cannot reasonably be relied on. It is further stated by the respondents that the complainants have no privity to the civil suit and hence no reliance on the same can be made out.

- c. Subsequent to the above-mentioned facts the respondents vide email dated 29.06.2022 cancelled the allotment of the said plot on account of non-payment and non-execution of BBA wherein the respondents request the complainants to return the original documents with respect to the particular plot and however as per the terms of the application form the company has the right to forfeit the token amount paid by allottee at the time of booking of said plot, but still as a goodwill gesture, the company hereby refunds the amounts paid by the complainants without any deduction. Moreover, the respondents'

state that, complainants being a financial defaulter, are not entitled to any interest whatsoever on the amounts paid.

- d. At the very outset, the authority construes that the complainants did not put any evidence with regard to the assurance by the respondents for demolition of the said structures upon the plots moreover the credence of the respondents upon the clauses of the application form bolstered their arguments that the plots were sold on "**as is where is basis**". Coming to the aforesaid indicators the complainants, according to the payment plan annexed with the allotment letter dated 28.03.2022 were obligated to make the next instalment of 25% of the TNC within 90 days of booking i.e., by 26.06.2022. No doubt that as per the provisions of Section 13(1) of the Rera Act, 2016 the promoter shall not accept more than 10% of the cost of apartment without first entering into a written agreement for sale. The respondent's goodwill can be traced from the letter dated 12.04.2022 that soon after allotment the respondents sent 2 sets of BBA for execution, the same has been agreed by the complainants in their complaints as well. Moreover, from the very instance it is clearly observed that the complainants wilfully refrained from execution of the buyer's agreement sent by the respondents, by putting the unreasonable demands of demolition of structures irrespective of the fact that the application form clearly states that the plots are sold on "**as is where is basis**".
- e. Thereafter, the respondents acting upon the wilful conduct of the complainants in order to bargain time for making the further payments terminated the said allotment after many requests to pay

the due instalments after signing of the BBA and also prepared the cheques of the booking amount without any interest and informed the complainants to collect the same and the said cheques are still with the respondents.

- f. In this context it can be said that the respondents were well within the terms of clause 20 of the model agreement annexed with Rules, 2017 which clearly states that if the allottee fails to execute the agreement within 30 days from the date of its receipt the promoter shall serve notice to the allottee to rectify the default, which if not rectified within 60 days from the date of its receipt, the said application shall be treated as cancelled and the promoter shall return the booking amount without any interest or compensation whatsoever. In light of the above the authority is of the view that the said termination is valid as the copy of BBA was supplied to the complainants on 12.04.2022 and the said allotment was cancelled on 29.06.2022 which is beyond the lapse of 60 days. Hence, it seems that the conduct of the respondents is reasonable, and it is the complainants who have refused to accept to the offer of cheques made by the respondents.
- g. Furthermore, the complainants are seeking relief of buy back of the plot at the current rate. However, there is no such provision in this regard in the application/allotment.
- h. Having come to the aforesaid conclusion, there would not have been any reason before the authority to invalidate the termination letter and no case of delay possession is made out. In view of the same, the

reliefs sought by the complainant are hereby denied in toto by the authority and the matters are dismissed accordingly.

18. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
19. True certified copies of this order be placed on the case file of each matter.
20. Files be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.08.2023



**HARERA**  
**GURUGRAM**