

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

<b>Complaint no.</b>	:	<b>4003 of 2021</b>
<b>Date of filing</b>	:	<b>30.09.2021</b>
<b>First date of hearing:</b>	:	<b>12.11.2021</b>
<b>Date of decision</b>	:	<b>08.08.2023</b>

1.	Sh. Harsh Vardhan Singh C/o Sh. Pawan Malawat	<b>Complainants</b>
2.	Smt. Pramila Singh C/o Sh. Pawan Malawat <b>Both R/o:</b> 208-B, Ramji House, Jambulwadi Kalbadevi Road, Mumbai	
Versus		
1.	Anant Raj Limited <b>Regd. office:</b> CP-01, Sector-8, IMT Manesar, Gurugram, Haryana-122051	
2.	Birla Estate Private Limited <b>Regd. Office:</b> - Birla Aurora, Level-8, Dr, Annie Besant Rao, Worli, Mumbai Maharashtra - 400030	
3.	Avarna Projects LLP	
4.	Rose Realty Private Limited	
5.	Hamara Realty Private Limited	
6.	North South Properties Private Limited	
7.	Excellent Inframart Private Limited	
8.	Glaze Properties Private Limited	
9.	Four Construction Private Limited	
10.	Sovereign Buildwell Private Limited	
11.	Sartaj Developers & Promoters Private Limited <b>All having Regd. Office at:</b> H-65, Connaught Circus, New Delhi- 110001	
12.	Four Star Realty Private Limited <b>Regd. office:</b> Shiv Sushil Bhawan, D-219, Vivek Vihar-I, New Delhi- 110095	
13.	Aman Sarin	

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14.	Amit Sarin <b>Both having office at:</b> H-65, Connaught Circus, New Delhi- 110001	<b>Respondents</b>
15.	Department of Town & Country Planning <b>Office:</b> Sector-18A, Madhya Marg, Near Panchayat Bhawan, Chandigarh	

**CORAM:**

Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

**APPEARANCE:**

Shri Yogesh Jagia (Advocate)	Complainants
Shri Rahul Bhardwaj (Advocate)	Respondent no. 1, 4 to 14
Shri Shivang Mukherji (Advocate)	Respondent no. 2
Shri Divij Kumar (Advocate)	Respondent no. 3
None	Respondent no. 15

**ORDER**

- The present complaint has been filed by the complainant/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 to the allottee as per the agreement for sale executed inter-se them.

**A. Unit and Project related details:**

- The particulars of the project, the details of 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	Information		
1.	Project name and location	"Anant Raj Estate" Sector- 63A, Gurugram		
2.	Project area	108.1245 Acres		
3.	Nature of the project	Plotted Colony		
4.	License details			
5.	<b>License no.</b>	<b>Granted on</b>	<b>Validity</b>	<b>Licensee</b>
	119 of 2011	28.12.2011	27.12.2019	Rose Realty Pvt. Ltd. & ors. C/o Anant Raj Industries Ltd.
	71 of 2014	29.07.2014	28.07.2024	Anant Raj Industries Ltd. & ors. C/o Anant Raj Industries Ltd.
6.	HRERA registered/ not registered	1. 142 of 2017 dated 28.08.2017 valid up to 27.08.2022 for 43.012 acres 2. 06 of 2020 dated 27.01.2020 valid up to 30.06.2024 for 3.79 acres. 3. 76 of 2020 dated 27.01.2020 valid up to 30.06.2024 for 1.15 acres		
7.	Application dated	18.10.2012 (As per page no. 88 of complaint)		
8.	Date of provisional allotment letter	16.01.2013 (As per page no. 88 of the complaint)		
9.	Date of plot buyer agreement	Not executed		
	The respondent sent draft BBA for signing and submitted receipt dated 17.05.2014 on page no. 100 od reply. However, no tracking report of such receipt has been submitted by the respondent.			
10.	Plot No.	Plot No. 18, Pocket- A (As per page no. 88 of the complaint)		

11.	Area admeasuring	692.64 sq. yard. (As per page no. 88 of the complaint)
	Revised area	690.33 sq. yards. (As per page no. 92 of the complaint)
12.	Total sale consideration	Rs.2,35,70,539 /- (As per payment plan of allotment letter at page no. 91 of complaint)
	Revised total sale consideration	Rs. 2,06,19,893/- (BSP) Rs. 2,35,70,539/- (TCS) (As per allotment letter dated 16.01.2013 on page no. 91 if complaint) Rs. 2,41,02,872/- (TCS) (As per intimation of possession letter dated 09,05.2014 on page no. 92 of complaint)
13.	Amount paid by the complainant	Rs. 2,52,00,000/- (As per sum of receipts on page no. 99 to 111 of the complaint)
14.	Possession clause	<b>Clause 4.2 of sample agreement</b> <i>The developer shall endeavour to hand over the possession of the floor unit <u>within 36 months from the date of execution of this plot buyer's agreement with a grace period of 6 months (Tentative handover date).</u> Notwithstanding the same, the developer shall at all times be entitled to an extension of time from the tentative handover date, if the completion of the colony or the part / portion of the colony where the said floor unit is situated is delayed on account of any force majeure event.</i>
15.	Due date of delivery of possession	<b>16.07.2016</b>

		<i>(Calculated from the date allotment letter i.e., 16.01.2013; as plot buyer's agreement is not executed.)</i> <b>Grace period of 6 months is allowed being unconditional.</b>
16.	Part completion certificate	05.05.2014 (As per page 47 of the reply)
17.	Date of intimation of possession and settlement of final dues to the complainant	09.05.2014 (As per page no. 92 of the complaint)
18.	Demand letter dated	21.05.2016 (As per page no. 122 of reply)
19.	Cancellation letter dated	12.10.2016 (As per page no. 123 of reply)
20.	Sale deed in favour of Avarna Projects LLP i.e., R3	14.10.2019 (As per page no. 156 of the complaint)
21.	Mail intimating cancellation letter	28.04.2021 (As per page no. 120 of the complaint)
22.	Legal notice sent by the complainant	25.05.2021 (As per page no. 144 of the complaint)

**B. Facts of the complaint**

3. That the complainants were jointly allotted a residential plot bearing number 18, Pocket-A, admeasuring 692.64 sq. yards by respondent no.1 in its residential plotted colony project named "Anant Raj Estate" situated in Sector-63A, Gurugram, Haryana.

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4. That the respondents under registered sale deed dated 14.08.2019 by violating all the terms and conditions of the license granted to them by the Town and Country Planning Department, Government of Haryana read with the sanction plans, conveyed land of the project to respondent no. 3, Avarna Projects LLP by causing wrongful loss to complainants and wrongful gain to these respondents along with respondent no.1 to 3.
5. That the respondent no.1 along with respondent no. 4 to 12 in short "Landowners" acquired in total 880 Kanal 14 Marla i.e., 110.0875 acres, situated at Villages, Ullahawas (Hb No. 83), Kadarpur (Hb No. 84) & Maidawas (Hb No. 85), in Sector-63A, Gurgaon, Manesar Urban Complex, District Gurgaon, Haryana, under various registered sale deeds for common object of developing a residential plotted colony project.
6. That the DTCP, on 28.12.2011 granted license bearing no. 119 of 2011 to respondent no.1 and 4 to 12 in respect of the land falling in the revenue estate of village Kadarpur, Maidwawas and Ullawas, Sector 63A, Gurugram-Manesar Urban complex for setting up of a "residential plotted colony" on the said land which was required to be developed on the terms and conditions as stipulated in said license. This license was valid up to 27.12.2015 and subsequently, was renewed up to 27.12.2019 by memo no. LC-2543-V-JE(VA)-2019/13942 dated 12.06.2019.
7. That the landowners subsequently approached DTCP for modification of license no. 119/2011 to add 7.8625 acres of land consisting of 62 Kanal 18



Marla and DTCP on 31.07.2014 issued license bearing no.71/2014 for the consolidated land including the land of 100.262 acres for which license no. 119/2011 was issued. The license no. 71/2014 was categorically issued for development of residential plotted colony by including additional 7.8625 acres in contiguous with the license no.119/2011. The landowners again approached DTCP for modification of license no.119/2011 to include additional area of 2.08125 acres and in pursuance thereto license bearing no. 104/2019 was issued, to landowners with stipulation that this additional land shall be part of land for which license no.119/2011 for development of residential plotted colony was granted.

8. That the respondent no.1, developer of the residential plotted colony commenced bookings for the said project by making advertisement/brochures depicting the proposed residential plotted colony as one of the fine environmental family residential complexes. Relying upon the representations made by the it, booked one residential plot in the said project on 24.01.2012 and made payment of Rs. 500,000/- as part consideration.
9. It is pertinent to note that at the time of booking, they filled a pre-printed application form given by the respondent no.1 which was retained by the respondent no.1, with no copy of the same given to the complainants.
10. That subsequently, the respondent no.1 allotted a residential plot bearing no. 18 in pocket-A situated in their project admeasuring 692.64 sq. yards vide provisional allotment letter dated 16.01.2013 for net cost of Rs. 2,35,70,536/-

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and also set out the schedule for payment of said amount. Meanwhile, it carried out final measurements of the plots area before handing over physical possession and in terms thereof, which comes out to be 690.37 sq. yards from earlier notified size of 692 sq. yards. Accordingly, the sale consideration of the subject unit was also revised, as intimated to them by it by possession letter.

11. That the respondent no.1, post final measurement and determination of final sale consideration, issued a possession letter dated 09.05.2014 to the complainants stating that possession of the subject unit is ready and called upon the complainants to make payment of Rs. 3,72,44,904/- (this amount included revised sale consideration for subject unit of Rs. 2,41,02,872/- and amount payable under other heads which included interest on delayed payment, club membership, non-refundable maintenance security charges, power backup charges, stamp duty amount, registration charges and other legal expenses) and Rs. 93,084/- towards maintenance charges and service tax thereon for one year in advance, which was payable within 30 days from the date of this letter i.e., by 09.06.2014, so to enable it to hand over the physical possession of the subject unit within 90 days from the date of the letter. Along with this possession letter a revised schedule for payment was also given.

12. That subsequently, there were negotiations between the complainants and respondent no.1 regarding the final amount to be paid by them for the subject unit and the timelines for execution of necessary title documents. Pursuant to said negotiations, the respondent no.1, on 28.05.2014 issued an intimation letter demanding full and final payment of Rs. 2,87,01,881/- after taking



account of initial payment of Rs. 5,00,000/- paid at the time of booking. It also charged amount under the head interest, power back up charges etc. and subsequent to the negotiations, the interest charged etc. as per the intimation letter dated 28.05.2014 was waived off and the complainants made following payments to the respondent-company towards cost of the subject unit under all heads:

Date of Cheque	Cheque No.	Cheque Amount	Receipt No.	Date of receipt
24/01/12	721157	5 lakhs	00454	24/04/12
21/07/14	440803	20 lakhs	01218	29/07/14
22/07/14	440804	20 lakhs	01219	29/07/14
23/07/14	440805	20 lakhs	01220	29/07/14
24/07/14	440806	20 lakhs	01221	29/07/14
25/07/14	440807	20 lakhs	01222	29/07/14
26/07/14	440808	17 lakhs	01223	29/07/14
27/05/15	095680	25 lakhs	01536	27/05/15
27/05/15	496402	20 lakhs	01533	27/05/15
27/05/15	496401	20 lakhs	01532	27/05/15
27/05/15	496403	20 lakhs	01534	27/05/15
27/05/15	496404	20 lakhs	01535	27/05/15
27/05/15	095681	25 lakhs	01537	27/05/15

It is pertinent to note that by receipt no. 01537 dated 27.05.2015, an amount of Rs. 9,94,200/- was paid by them under the head "stamp duty amount, registration charges and legal documentation expenses".

13. That on 24.08.2015, it issued a demand letter to the complainants which was in continuation of possession letter dated 09.05.2014 and intimation letter

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dated 25.05.2014, showing outstanding amount of Rs. 11,26,609/-. Out of the said amount, Rs. 1,32,409/- was shown to be outstanding under club membership charges & power backup installation charges and Rs. 9,94,200/- was shown outstanding under the stamp duty & registration charges, both of which were computed under the head "other component". It is pertinent to note that above demand letter showed zero amount as payable against total sale consideration which included basic sale price, PLC, EDC/IDC charges therefore even as per the case of the respondent no.1, they have paid entire amount towards agreed sale consideration. Further, the amount demanded as per the above demand letter for "club membership & power backup installation charges" and "stamp duty and registration" the same was duly paid by the complainants vide receipt no.01537 dated 27.05.2015. Therefore, demand of the respondent no.1 in that regard were totally illegal.

14. That between 2015 to 2020, the complainants kept pursuing the case with the respondent no.1, demanding execution and registration of necessary sale deed for the subject unit in their favour, as the entire payment was already made. Various oral communications and personal meetings were arranged in this regard. Seeing no resolve of their grievance and sensing something sinister on part of the respondent no.1 in deliberately delaying execution and registration of the sale deed for the subject unit despite having received entire amount, by whimsically insisting for payment of "stamp duty and registration charges and "club membership and power back up installation charges" twice, they decided to aggressively pursue the matter and therefore, they arranged other meeting

with the officials of the respondent-company where Mr. Amit Sarin, assured that subject unit belongs to the complainants and execution and registration of its sale deed shall be done for which he asked 2 days' time for getting the required paperwork complete.

15. Yet another meeting was arranged with the officials of the respondent-company where Mr. Aman Sarin concocted another story and stated that subject unit cannot be conveyed to the complainants due to government restrictions as high-tension wires passes nearby to the said plot and instead offered allotment of smaller plots admeasuring 300 sq. yards in B Block of the same project, Anant Raj Estates or in alternative offered Rs. 5 crores in settlement of all claims of the complainants in the subject unit, as given by Mr. Amit Sarin in previous meeting. The complainants were shocked to hear the same, since all this while the complainants were never informed about the alleged government restrictions being cited and this was the first time that this issue was being raised so that the said issue was never brought to their notice before. They outrightly declined the offer of allotment of alternative small plots and making payment of Rs. 5 crore in lieu of subject unit and reiterated claim for execution and registration of sale deed of the subject unit in favour of the complainants.

16. That the complainants sent a letter through Whatsapp to Mr. Amit Sarin and copy of the same was also sent to Mr. Suresh inter-alia stating that the company has been deliberately delaying execution and registration of sale deed which is pending for last 6 years and same needs to be expedited and completed before

31.03.2021, otherwise they would be constrained to take legal action, to which they were again called for other meeting in which the respondent repeated the story that subject unit cannot be conveyed to the complainants due to government restrictions as high-tension wires passes nearby to the said plot and stated that respondent no.1 shall provide just compensation in lieu of the subject unit. The complainants again demanded supporting documents for alleged government restrictions, however, the same were not provided by giving an alibi that same are being retrieved from record and shall be provided in due course. But they were not provided with any supporting documents to that effect which goes on to prove that same was a farce.

17. That since no response on behalf of the respondent no.1 and sensing sinister intentions, the complainant no.1 on 19.04.2021 itself, sent an email on the known ID of respondent no.1 i.e. [estate@anantrajlimited.com](mailto:estate@anantrajlimited.com) demanding execution and registration of sale deed for the subject unit in favour of the complainants. The contents of the email were sent through whatsapp to Mr. Amit Sarin and to Mr. Suresh, but the issue was again delayed on pretext of outbreak of Covid-19.

18. That after 26.04.2021, on opening of the lockdown again there was no response on behalf of respondent no.1. Upon receiving no response, the complainant no. 1, on 26.04.2021 sent another message to Mr. Amit Sarin and Mr. Suresh on their respective mobile number attaching respondent no.1's policy of charging interest on delayed payment and on parity demanded that any amount that may be paid by respondent no.1 towards alleged compensation, if the subject

unit cannot be conveyed because of the alleged government restrictions shall also be interest bearing.

19. That surprisingly, when they were awaiting response on behalf of the respondent no. 1 as was being repeatedly assured, on 28.04.2021, the complainant no.1 received an email from Mr. Ravinder Kumar, General Manager, Operations, of the respondent no.1 stating that provisional allotment of the subject unit has been cancelled as Sh. AK Singh despite being contacted on behalf of respondent no.1 has not responded since 21.05.2016 when the letter for making balance payment and getting conveyance deed was sent by the company. Further it was stated that refund shall be made in compliance with terms and conditions of the provisional application form and subsequent letter issued by the company. The fraudulent intentions of respondent no.1 and its representative in issuing abovementioned email dated 28.04.2016 is writ large, apart from the fact that false and unsubstantiated claims have been made therein, firstly the same is stated to be in response to the message sent through whatsapp on 27.03.2021 and 19.04.2021 and in so far message sent on 19.04.2021 is concerned, thereafter Mr. Suresh was in constant touch with complainant no.1 and has been making assurances and representations, as stated above however the same do not find mention so much so that the alleged reason being cited of government restrictions on transfer of the subject unit has not been mentioned. Further, the reason given for cancellation at the outset is totally preposterous as Mr. AK Singh was not the allottee of the subject unit.



No cancellation letter was attached with said email, no supporting documents have been provided till date as was assured in the above-mentioned email.

20. That on receiving the above-mentioned email dated 28.04.2021, the complainants sent email to Mr. Ravinder Kumar, GM operations of respondent no.1, asking for the scan copy of the necessary cancellation letter be sent to him not later than 11:30am of 29.04.2021. Failing to receive any response, complainant no.1 again on 29.04.2021 send an email asking for copy of cancellation letter sent to him by evening.

21. That on 30.04.2021, the complainants sent an email to Mr. Ravinder Kumar, GM operations of respondent no.1, which was in continuation to his earlier mail dated 28.04.2021 and 29.04.2021 again asking for alleged cancellation letter for the subject unit. Failing to solicit any response, complainant no.1 on the same day i.e. 30.04.2021 sent a second email to Mr. Ravinder Kumar, putting the respondent no.1 to notice that despite repeated follow up it has failed to send the alleged cancellation letter which manifest malafide intention of the respondent no. 1. Further, the respondent no.1 is also put to notice to inter-alia that it has no legal competence to cancel the allotment of the subject unit and that subject unit is the exclusive property of the complainants as they have paid the full consideration and respondent no.1 cannot deal with it in any manner without express permission of the complainants.

22. That it came to the knowledge of the complainants that respondent no.1 had formed a joint venture with Birla Group named "Avarna Projects LLP" for

development of residential built-up floors on the same land for which respondent no.1 obtained permission/license from DTCP for development of residential plotted colony under license no.119/2011 read with 71/2014 and 104/2019 i.e., 110.0875 acres.

23. That on 25.05.2021, a legal notice was received by the complainant no.1, issued on behalf of respondent no.1 in response to email dated 29.04.2021, 04.05.2021 wherein it was stated inter-alia that due to non-payment of Rs.11,44,631/- which includes revised charges towards stamp duty and registration fee despite repeated reminders allotment of the subject unit stood cancelled and advance payment made stands forfeited. The mendacious intentions of the respondent no.1 in getting issued this legal notice is writ large from the fact that contents of this legal notice are contradictory to email dated 28.04.2021 of Mr. Ravinder GM Operations of respondent no.1 allegedly cancelling allotment of subject unit and the demand letter dated 24.08.2015 so that even with this legal notice no cancellation letter was attached. Further, reasons given in this legal notice for cancellation i.e., amount outstanding against the "Stamp duty and registration" not being paid, was already paid vide receipt no. 01537 dated 27.05.2015 and the said issue was settled in the meeting dated 23.03.2021 with Mr. Amit Sarin and the same was not an issue in all the subsequent meetings between the complainants and respondent.
24. That the complainants having felt cheated commenced making enquiries about the project, which was a residential plotted colony project and the joint venture LLP promoted and formed by respondent no.1 and 2 by visiting official website

of Ministry of Corporate Affairs, Haryana RERA and Director Town and Country Planning, Government of Haryana, and with the office of Sub Registrar, Gurugram, to verify status of title of the plot of land. It was found that LLP under the name "Avarna Project LLP" with LLP IN No. AAP6767 was promoted and incorporated by two designated partners on 19.06.2019 with registered office at H-65, Connaught Circus, New Delhi, which is the registered office of respondent no.1 so much, so the official email ID of this LLP is of respondent no.1. Further, the registered addresses of respondent no. 4 to 12 is also same that of respondent no.1. This LLP was promoted by Respondent no.1 and 2 for carrying out real estate activities.

25. That the complainants on 22.06.2021 obtained certified copy of the sale deed dated 14.10.2019 executed by respondent no.1 along with other co-owners (respondent no.4 to 12) for the plot of land of which development for the project Anant Raj Estate was being carried out in terms of the sanction granted by DTCP. To the dismay of the complainants, it was observed that the entire said land comprising of the license no. 119/2011(supra), 71/2014(supra) and 104/2019(supra) was surreptitiously transferred to Avarna Project LLP, respondent no.3 on the terms and conditions therein.

26. That on causing further verification on the portal of Haryana RERA, it was noticed that respondent no.1, Anant Raj Industries Limited post notification of RERA, registered its project vide registration no. 142/2017. That post incorporation of Avarna Projects LLP, as stated above, registered two of its projects with Haryana RERA under the name; "Birla Navya (Drisha 1A)"-Project

No.07 of 2020 and "Birla Navya (Amoda 1 and II)"-Project no.06 of 2020 vide registration number RC/REP/HARERA/GGM/391/123/2020/07 Dt.27/01/20 and RC/REP/HRERA/ GGM/390/122/2020/06 Dated 27.01.20, situated in sector 63-A of Gurugram, Haryana on the land on which project of plotted residential colony was commenced in the year 2011 by the respondent no.1 and its associates after obtaining license from the DTCP. It is further noticed that on 01.03.2014 plan was sanctioned to respondent no.1 under license no. 71/2014 dated 29.07.2014 for 108.125 Acres for development of plotted residential colony, which was subsequently revised by Memo No. ZP-780/JD(RD)/2019/23625 dated 18.09.2019.

27. That the complainants on gaining knowledge of the above information which ex facie establish fraud and deceitful acts of the respondent no.1 to 13, caused filing of an application under the RTI Act, 2005 dated 01.07.2021 with Haryana Real Estate Regulatory Authority and the Authority, in response to the above RTI application, provided only part of the information and for rest of information, it has been referred to Directorate of Town and Country Planning, Haryana. Thereafter a letter was received from Directorate of Town and Country Planning, Haryana, they also seeking clarification with respect to the information sought.

28. That the respondent no.1 having received the entire agreed sale consideration of the above plot of land (subject unit) from the complainants and having offered physical possession along with execution and registration of the necessary sale deed for the same, turned dishonest and to exploit the

commercial opportunity of the land abandoned the license granted to it for a residential plotted colony and envisaged residential built-up floors in the name of respondent i.e., Avarna Projects LLP.

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

29. The complainants have sought following relief:

- i. Declare mail notice dated 28.04.2021 & 25.05.2021 cancelling allotment of residential plot and forfeiting the amount paid by the complainant, as illegal and void ab initio.
- ii. Direct the respondent no. 1-13 to handover the vacant, peaceful possession of the residential plot.
- iii. Direct the respondent to get the sale deed executed in favour of the complainant and do all the further acts to register the sale deed.
- iv. Direct the respondent to pay damages for delay in handing over of the possession and causing mental agony by declining to execute sale deed and cancelling the allotted.
- v. Direct the respondent to pay cost of present complaint.

30. On the date of hearing, the authority explained to the respondent/promoter 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 respondent no. 1 & 4 to 14:**

31. The respondent no. 1 & 4 to 14 by way of written reply made following submissions: -

- a. That the answering respondents submit that the averments made by the complainants do not have any merit on the issue of fact as well as law. It is

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- submitted that the complainants have, with mala fide intent, made averments hiding vital and material facts with a clear and set intent to mislead the Authority.
- b. That the present complaint has been filed devoid of any merits and the same is out of limitation period as the present complaint has been filed after a lapse of 6 years from the date of cancellation of the plot and, in the interest of justice the same should be dismissed at the threshold.
- c. That the captioned complaint is not maintainable against respondents no. 4-12 who are neither necessary nor proper parties to the present suit. The defendants no. 13-14 are directors/promoters of the respondent no 2. Hence, the present complaint is barred against the aforesaid respondents from mis-joinder and non-joinder of the necessary parties. Pertinently, they have only dealt with the respondent no. 1 during the entire transaction and as such, the respondents no. 4-14 has undertaken no liability towards the complainants in their respective personal capacity. Therefore, the respondents no. 4-14 ought to be struck off from the memo of parties as the adjudication of the present complaint is possible even without impleading them.
- d. That the present petition, so preferred under the Act of 2016, is not maintainable as the complainants have failed to disclose any maintainable cause of action under the said provisions of the Act as alleged as well as is out of limitation period.

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- e. That in the year 2011, respondent no. 1 along with other respondents ("Landowner") acquired a land total of 100.262 acres, in Sector-63A, Gurgaon, Manesar Urban Complex, District Gurgaon, Haryana, vide various registered sale deeds to develop a residential plotted colony, namely, "Anant Raj Estate" and obtained a licence from DTCP.
- f. That as per Section 3(2)(a) of the Act of 2016, the Authority does not have jurisdiction over the project land, since the DTCP has already granted a partial-completion to the project vide certificate dated 05.05.2014 bearing Memo No. LC-2543-JE(S)-2014/8878 in respect of the license bearing No. 119/2011. The project land for which the respondent no. 1 has secured the part-completion certificate also includes the portion of land where the complainant's plot is located, That the father of complainants approached the respondent no.1 in the year 2012 and expressed his interest in purchasing a residential plot after checking the veracity of the project namely, "Anant Raj Estates" and applied for a plot in the said project vide application form dated 18.10.2012. Accordingly, the respondent no. 1 vide provisional allotment letter dated 16.01.2013, allotted the residential plot no. 18 in pocket A, admeasuring 692.64 sq. yd. ("the plot") subject to the conditions.
- g. That subsequent to the execution of the application form and the provisional allotment letter, the respondent no. 1 issued a final allotment letter dated 02.07.2013 confirming the allotment of the above-mentioned plot in the favour of the complainants for the total sale consideration of

Rs. 2,41,83,526/- excluding the miscellaneous charges payable on possession.

- h. That the allotment letter being the preliminary draft containing the basic and primary understanding was executed on 02.07.2013 between both the parties. That the allotment letter being the initial document, which was just an understanding document, was to be followed by the plot buyer agreement, to be executed between the parties. However, they kept on delaying the signing of the plot buyer agreement on one or the other pretext of their constant travels for work and kept promising/assuring the respondent no. 1 to visit their office to execute the buyer agreement.
- i. That the respondent no. 1 sent numerous reminder notices in order to execute the plot buyer agreement failing which the respondent no. 1 at its sole discretion had the option to terminate the said allotment of the plot as per the terms and conditions laid down in the application form and allotment letter. However, out of its goodwill, it did not terminate the allotment of the plot rather, sent a plot buyer agreement via courier dated 17.05.2014 for signing. However, the complainants never returned the said plot buyer agreement by signing the same and even after numerous requests therefore, as a result due to the fault of the complainant the plot buyer agreement between the parties could never be executed.
- j. That the complainants till the issuance of the first demand letter paid only Rs 5,00,000/- in the year 2012 at the time of signing of the application form.

The complainants never came forward to pay the further instalments towards sale consideration even after signing the final allotment letter and only started paying the payments in 2014 after the complainants started receiving continuous demand letters from it, as they were never serious towards the purchase of the plot by turning their deaf ears to the same. It would not be out of place to state that they were habitual and wilful defaulters, who deliberately abstained themselves from paying the instalments on time.

- k. That the respondent no. 1 kept on raising regular demand notices from time to time in order to clear the outstanding dues towards the total sale consideration. The first demand letter was raised by the respondent no. 1 through provisional allotment letter dated 16.01.2013 to which they paid nothing out of Rs. 46,54,973/- which was due and payable by 31.01.2013. Such default of non-deposit entitled it to cancel their provisional allotment and retain the earnest money deposited by them. However, it did not take the harsh step of cancellation of provisional allotment. On the contrary, it issued final allotment letter dated 02.07.2013 in favour of the complainants wherein demand of Rs. 39,83,892/- was raised, out of which they again paid nothing till the due date as per the said demand letter.
- l. That similarly third and fourth demand letters dated 07.08.2013 and 25.10.2013 respectively, both amounting to Rs. 60,36,881/- each were also raised by the respondent no. 1 to which they paid no heed and paid nothing as per the demand letters. Further, reminders dated 06.12.2013,

07.01.2014 and 24.08.2015 were also sent to them via emails to clear the outstanding dues as well as informing them to execute the conveyance deed in their favour.

- m. That upon the grant of part completion certificate dated 05.05.2014 by the competent authority, the respondent no. 1 sent them possession letter dated 09.05.2014 intimating them to take the possession of their allotted plot subject to clearing of the outstanding dues and signing of the plot buyer agreement. By virtue of said possession letter, they were specifically intimated that at this stage, the plot allotted to the complainants was finally measured as 690.33 sq. yds instead of the earlier measurement of 692.64 sq. yds. Keeping in consonance with the customer centric and ethical business practices, it revised the payment liable to be paid by them towards the said plot to Rs. 2,41,02,872/- and as per said possession letter the same was payable by 09.05.2014. Thus, an amount of Rs. 2,36,02,872/- was due and payable towards sale consideration by 09.06.2014, where other possession related charges amounting to Rs. 50,05,925/- including delayed payment interest of Rs. 28,75,272/- was also due and payable in order to grant the possession of the said plot to them. It sent the said possession letter in good faith despite knowing the fact that the latter has failed to execute the plot buyer agreement as well as have paid only a meagre amount of Rs. 5,00,000/- at the time of booking of the plot towards the total consideration. A reminder was sent them vide letter dated 28.05.2014, and thereafter, it received part payment amounting to Rs. 1,17,00,000/- on

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29.07.2014 out of total dues of Rs. 2,86,08,797/-. Further part payment was received by the respondent no. 1 vide various cheques dated 27.05.2015 of Rs. 1,30,00,000/- not including the interest charges. Thus, an amount of Rs. 11,26,609/- still stood outstanding, for which it again issued letter dated 24.08.2015 to them.

- n. That after obtaining no response from them, the respondent no. 1 herein sent final reminder letter dated 21.05.2016 requesting them to clear the balance payment of the last instalment amounting to Rs. 11,44,631/- along with the payable amount towards the interest amounting to Rs. 57,42,945/- on account of delayed payments made by them. The respondent no. 1 vide the same letter provided 30 days to clear the dues as well as to submit the plot buyer agreement along with other requisite documents and allow the respondents to handover the possession of the said plot, failing which it would be constrained to cancel the said plot. However, they paid no heed to the requests of the respondent no. 1.
- o. That, after continuous and wilful defaults on behalf of the complainants, the respondent no. 1 was constrained to cancel the plot vide cancellation letter dated 12.10.2016 as it was left with no other option. The respondent no. 1 duly intimated the complainants regarding their cancellation by sending the same to their residence via speed post bearing no. ED842247687IN. At the time of cancellation, the complainants were bound to pay the charges amounting to Rs. 68,78,173/- (including the interest charges as well as the charges towards the stamp duty). It cancelled the plot in consonance with

the terms of the provisional allotment letter issued and did not breach any of the terms and conditions of the provisional allotment letter and the cancellation of the said plot was done way before the enactment of this Authority, which clearly establishes that the said dispute in question does not fall within the jurisdiction of this Authority.

- p. That surprisingly, even after the intimation regarding the cancellation of the plot, they never came forward to clear the outstanding dues as well to take the possession of the plot, which clearly reflects the non-serious and queer behaviour of the complainants towards their purchase of the plot. Therefore, it would not be out of place to state that they are investors and booked the plot to yield gainful returns by selling the same in the open market. Even they do not come forward to take the possession of the plot since 2015. Due to the ongoing slump in the real estate market at that time in 2015-16. Moreover, the complainants even started asking for a refund around late 2021 of the entire amounts paid by them along with the interest despite consistent breaches committed, to which the respondents tried to settle the dispute in question amicably. This behaviour of the complainants clearly establishes the fact they are investors and are trying to gain good returns at such a belated stage i.e., after 6 years without execution the plot buyer agreement and without taking possession of the plot as well as by defaulting in the payments towards the sale consideration of the plot. Therefore, they does not come under the ambit and scope of the definition

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an allottee under Section 2(d) of the Act, as they are investors and booked the unit in order to enjoy the good returns from the project.

- q. That the careless and lackadaisical approach of the complainants can be observed from the fact that the complainants never since 2012 took any pain to send the respondents a signed copy of the plot buyer agreement as well as to clear the outstanding dues towards the total consideration of the plot for the best reasons known to them. This clearly establishes the fact that the complainants from the very inception breached the terms and conditions of the application form, allotment letter as well as the plot buyer agreement in as much as the terms and conditions of the plot buyer agreement were only an addition (being in the final nature) of the allotment letter that was executed at the initial stage. The interest that stood outstanding as per the accounts of the complainants till 2016 was amounting to Rs. 57,51,564/-. The relevant clause is produced hereinunder:

*"Clause 24. The Terms & Conditions mentioned herein shall be in addition to those specified in the agreement to sell/plot buyer agreement. In case of any inconsistency between the terms & conditions mentioned herein and terms and conditions specified in the agreement to sell/plot buyer agreement, the terms and conditions specified in the latter, shall supersede."*

That, it is pertinent to further mention that the allotment of the said plot was cancelled vide cancellation letter dated 12.10.2016 after they breached the terms and conditions of the application form as well as the demand letters. As per the terms and conditions laid down in the application form

as well as in the final allotment letter executed with the complainants, any delay or failure to pay the amount towards the sale consideration would entitle the respondent no. 1 at their own discretion to cancel the plot and forfeit the earnest money.

- r. That, it would not be out of place to state that they are knocking the doors of this Authority for some relief somewhere in 2022 i.e. almost after 6 years of the execution of the final allotment letter with the respondent no. 1. This huge gap in the filing of this frivolous complaint establishes the fact that neither the complainants were serious in executing the plot buyer agreement and timely payments of the instalments towards the sale consideration of the plot, nor they are serious in filing the present complaint with true facts and in a timely fashion. Therefore, the respondent no. 1 submits that the present complaint has been filed after a lapse of 6 years of the cancellation of the plot by the respondent no. 1 on account of failure of the payments which ousts the complainants of the limitation period to file the present complaint. However, the respondent no. 1 is committed to adhere the terms and conditions of the final allotment letter by paying the money paid by the complainants after deducting the earnest money subject to the return of all the documents pertaining to the said plot, within a period of 90 days of receiving the documents from the complainants.
- s. That the complainants, thus, have approached this Authority with unclean hands and have suppressed and concealed the material facts. It is settled

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law as held by the Hon'ble Supreme Court of India in the case of **S.P. Chengalvaraya Naidu v. Jagannath 1994 (1) SCC (1)** that "*non-disclosure of material facts and documents amounts to a fraud on not only on the opposite parties but also on the court*". Reference may also be made to the decisions of the Hon'ble Supreme Court of India in the case of **Dilip Singh Vs State of UP 2010 (2) SCC (114)** and in the case of **Amar Singh Vs Union of India 2011 (7) SCC (69)**.

- t. That the complainants are misleading the Authority by making false claims and statements, it is submitted that they have not paid the entire consideration amount till date and till 2016 an amount of Rs.68,78,173/- including interest charges of Rs.57,51,564/- was due on their part which led to the cancellation of the said plot. That no communication of any sort took place between the parties for a period of 5 years and the complainants did not approach the respondent regarding their allotment for the reasons best known to them. It is submitted that due to the non-payment of the outstanding amount on part of the complainants the said allotment of the plot was cancelled dated 12.10.2016 as per the terms and conditions of application form and allotment letter.
- u. That the respondent never asked the complainant to make any payment twice for anything and it is a true fact that there is a high-tension wire passing through nearby of the said plot. However, it denies that any other plot to the complainant or Rs. 5,00,00,000/- in alternative to settle the claims of the complainants was offered to them. However, it is submitted



that the due to the non-payment of the dues the complainant's plot was cancelled dated 12.10.2016 which was duly intimated to the complainants by sending the same via speed post at their residence. The complainants have never paid their dues on time and till date they haven't paid the entire consideration including the delayed interest. The respondent has fulfilled all of its obligations in fact it is the complainants who have not fulfilled their obligations as a result their allotment got cancelled dated 12.10.2016.

**E. Reply by the respondent no. 2:**

32. The respondent no. 2 by way of written reply made following submissions: -

- a. That the dispute in question is pertaining to an alleged sale of the residential plot no. 18, Pocket-A, admeasuring 692.64 sq. yards ("Plot"), allotted to the complainants by the respondent no.1. The present complaint, in that regard, is limited to the transactions occurring pertaining to the aforesaid plot and is in the nature of a commercial transaction between the complainants and respondent no. 1. In the present matter, where the answering respondent has no privity of contract with the complainants, no order of injunction or relief for compensation can be passed against the answering respondent no. 2. It is trite to state herein that even the respondent No. 3 has no privity of contract with the complainants, which further deviates their alleged claim.
- b. That the respondent no. 2 is engaged in a joint venture towards the development of the projects "Birla Navya (Drishal A)" and "Birla Navya

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[Amoda I and II]", which has no bearing to the facts of the present complaint. Further, no violation of any provisions of the Act of 2016 have been committed by the respondent no. 2. Admittedly, the respondent no. 2 is neither the landowner, nor the developer or the promoter of the project, hence no relief can be claimed against it. Further, the complainants are not "allottees" in terms of Section 2(d) of the Act of 2016 in relation to the project(s) "Birla Navya (Drishal A)" and "Birla Navya (Amoda I and II)".

**F. Reply by the respondent no. 3:**

33. The respondent no. 3 by way of written reply made following submissions: -

- a. That the dispute in question pertains to an alleged sale of the residential plot no. 18, pocket-a, admeasuring 692.64 sq. yards ("Plot"), allotted to the complainants by the respondent no. 1. The present complaint, in that regard, is limited to the transactions occurring pertaining to the aforesaid plot and is in the nature of a commercial transaction between the complainants and respondent no. 1.
- b. That the respondent no. 3 is a bona fide purchaser of 191 residential plots as defined in complaint, duly verified by the registered sale deed dated 14.10.2019. The aforesaid plot forms a part of the same acquired land. The respondent no. 3 has purchased the aforesaid land towards the development of the projects "Birla Navya (DrishalA)" and "Birla Navya (Amoda I and II)", with registration numbers HARERA RERA- GRG-499-

2019 & RERA-GRG-505-2019, which has no bearing to the facts of the present complaint. Further, no violation of any provisions of the Act have been averred as having been committed by the respondent no. 3. Admittedly, the complainants are not even allottees to the project(s) "Birla Navya (DrishalA)" and "Birla Navya (Amoda I and II)" and are only allottees of the Project "Anant Raj Estate" bearing registration No. 142 of 2017 dated 28.08.2017, to which the respondent no. 3 has no nexus. Further, no application towards the registration of the Project "Anant Raj Estate" has been made by the answering respondent under Section 4 Act of 2016, which is a necessary pre-requisite for any claim of possession under Section 19(3) of the Act of 2016. It is pertinent to mention that none of the projects of the answering respondent have any allotment in favour of the complainants herein.

- c. That at the outset, at the time of execution of the sale deed in favour of respondent no. 3, the title of the plot in question being part of the contiguous lands purchased by the respondent no. 3, were vested in respondent no. 1 and not the complainants. In furtherance of the same, respondent no. 3 is a bona fide purchaser who has purchased the contiguous lands after proper due diligence. It is pertinent to mention herein that as part of the due diligence done by the respondent no. 3, a public notice had also been issued pertaining to the purchase of the residential plots, in both English and vernacular. The complainants had a thorough opportunity at this stage to provide their objection to the same,

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however, no such objection was received from them. It is therefore submitted that they are not "allottees" in terms of Section 2(d) of the Act of 2016 in relation to the project(s) "Birla Navya (Drishala)" and "Birla Navya (Amoda I and II)".

- d. That no sale deed has been executed at any stage in the present proceedings in favour of the complainants. Therefore, have no title towards the plot, and the grant of possession against the defined title of the respondent no. 3 LLP towards the plot is beyond the scope of this Authority. In furtherance of the same, reliance is placed on the sale deed already placed on record by the complainant and decision of the Hon'ble Supreme Court of India in *T.V. Ramakrishna Reddy v. M Mallappa & Anr., 2021 SCC Online SC 674*.
- e. That the prayer sought by the complainants, i.e. seeking possession of the allegedly allotted Plot is not a relief that can be granted by this Hon'ble Authority. It is humbly submitted that while the Complaint has been filed under Section 31 of the RERA Act, no relief can be granted under Section 31 against any entity who is not a "Promoter, Allottee or Real Estate Agent". It is submitted that the Respondent No. 3, having no privity of contract with the Complainants herein, is strictly omitted from the purview of the above provision.
- f. That the present dispute is beyond the scope of this Authority also due to the complainants never being an allottee of the project being developed by

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the respondent no. 3, wherein the alleged plot is currently situated. It is submitted that the respondent no. 3 LLP is a bona fide purchaser of the same and purchased the property believing it to be free from all encumbrances. It is submitted that given nature of the averments, the present dispute also requires to be adjudicated upon after duly assessing the provisions of Section 41 of the Transfer of Property Act, 1882.

- g. That, furthermore, the present complaint has at numerous stages alleged allegations of fraud as against the respondent no. 1, as well as baseless allegations of the respondents no. 2 and 3 acting in connivance with the respondent no. 1. The arguments of the Complainants, while largely being prone to conjecture and claims without any documentary evidence, also completely ignore the limited scope of Authority. It is humbly submitted that this Authority deals with proceedings which are summary in nature, and such allegations of fraud are necessary to be dealt with before a Civil Court, where evidence has to be led in furtherance of the allegations.
- h. That indirectly, the relief sought by the complainant essentially seeks a declaration against the sale deed between respondent no. 1 and respondent no. 3 as being void, which is not a relief that can be granted by this Authority. It is reiterated that the proceedings before this Authority are to be based strictly based on the documents, the same being summary in nature. The only competent authority to try the proceedings pertaining to declaration of title would be a civil court, as detailed hereinabove. The aforesaid sale deed being duly registered, and the respondent no. 3 being



a bona fide purchaser, the only relief available to the complainants is before Civil Courts for which due evidence has to be led and examined.

34. No reply on behalf of respondent no. 15 has been filed.
35. All other averments made in the complaint were denied in toto.
36. 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 based on these undisputed documents as well as written submissions filed by the answering-respondents.

#### **G. Jurisdiction of the authority**

37. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

##### **G. I Territorial jurisdiction**

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.

##### **G. II 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)*

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*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 the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

#### **H. Findings on the objections raised by the respondent:**

##### **H.I Objection regarding maintainability of complaint on account of complainants being investors.**

38. The respondent took a stand that the complainants are investors and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainants are buyers' and they have paid total price of Rs.2,52,00,000/- to the promoter towards purchase of unit in its project. At this stage, it is important to stress

upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

**I. Findings regarding relief sought by the complainants.**

**I.1 Declare mail notice dated 28.04.2021 & 25.05.2021 cancelling allotment of residential plot and forfeiting the amount paid by the complainant, as illegal and void ab initio.**

39. It is evident from the perusal of the particulars given in the tabular form above that vide letter of allotment dated 16.01.2013, the complainants were allotted plot bearing no. 18 in pocket A admeasuring 696.64 sq. yards for total sale consideration of Rs. 2,35,70,539/-. No buyer's agreement has been executed inter-se parties, however, it has been the version of the respondent no. 1 and

4-14 that they supplied a copy of buyer's agreement to the respondent but the same was never signed/ sent back to them. Further, it as an admitted fact that as per intimation of possession letter dated 09.05.2014, the area of the subject plot was revised from 692.64 sq. yards. to 690.33 sq. yards and the price of same was also revised from Rs. 2,35,70,539/- to Rs. 2,41,02,872/-. The complainant has already paid an amount of Rs. 2,52,00,000/- towards sale consideration of subject unit. As per sample agreement placed on record, the due date of possession is to be calculated as 36 months from date of executing buyer's agreement with a grace period of six months. Since no buyer's agreement has been executed inter-se parties, the due date of handing over of possession is calculated from date of allotment i.e. 16.01.2013. As such due date of handing over of possession along with grace period of six months comes out to be 16.07.2016. The respondent after obtaining completion certificate dated 05.05.2014 from the competent Authority, has offered the possession of the plot vide letter dated 09.05.2014.

40. Vide proceedings dated 15.11.2022, respondent no. 1, 4-14 through its council stated at bar that letter of possession was sent to the complainants on a good faith despite having no BBA and payment of a meagre amount of Rs. 5,00,000 at the time of booking on 09.05.2014. Further, it issued reminders dated 29.07.2014 and 27.05.2015 for part payment were issued to the complainant which did not include the interest charges. The respondent again sent a reminder to the complainants to pay outstanding amount of last installment of Rs. 11,44,631/- dated 21.05.2016 along with delay interest of Rs. 57,42,945/-

within 30 days. Due to continuous and wilful default on their part, it was constrained to cancel the plot while letter dated 12.10.2016 and further submitted that the present complaint is not maintainable due to lack of jurisdiction of the Authority on the ground that the respondent-builder has obtained the part completion certificate in the year 2014 and the present complaint has been filed after a lapse of 7 years from the date of cancellation of the plot.

41. Keeping in view the tangled facts involved, it is relevant to comment upon the validity of cancellation letter/email dated 12.10.2016 and 28.04.2021. The respondent-builder submitted that it also sent another demand letter dated 21.05.2015 after offer of possession of the subject plot but the complainant did not come forward to make payment of outstanding dues, resulting in issuance of cancellation letter dated 12.10.2016 and hence, the instant complaint is barred by limitation. It further submitted that the said unit was then sold to Avarna Projects LLP (Respondent no. 03) vide sale deed dated 14.10.2019. On the other hand, the complainants submitted that no cancellation letter dated 12.10.2016 was ever received by them and it was vide email dated 28.04.2021 only when they were informed about cancellation of their plot. To which they asked the respondent to send them the copy of said cancellation letter dated 12.10.2016, failing which they sent legal notice dated 25.05.2021 to the respondent.

42. The Authority observes that the respondent has placed on record alleged cancellation letter dated on page no. 123 of reply along with tracking ID no. but



has failed to provide on record its tracking receipt or any proof that the same has been delivered to the complainants. Further, the complainants after receiving email dated 28.04.2021 wherein intimating cancellation of subject unit wrote email dated 28.04.2021, 29.04.202, 30.04.2021, 01.05.2021, 04.05.2021 and 04.05.2021 on page no. 124-143 of complaint wherein asking the respondent-company to send the copy of alleged cancellation letter dated 12.10.2016. The fact is quite surprising that despite several emails wrote by the complainants to the respondent as mentioned above, it has failed to provide copy of same to them. Hence, the said cancellation letter dated 12.10.2016 cannot be taken into consideration as it would be unjust to rely on any document placed on record by any party, existence of which is not confirmed. Since there alleged document is already in question, no plea with regard to limitation on basis of same can be raised.

43. Further, as far as validity of cancellation vide mail dated 28.04.2021 is concerned, the same cannot be considered valid. The respondent submitted that despite receipt of a meagre amount of Rs. 5,00,000 at the time of booking on 09.05.2014, offer possession of plot and it issued reminders dated 29.07.2014 and 27.05.2015 for payment of outstanding dues which did not include the interest charges. It again sent a reminder to the complainants to pay outstanding amount of last installment of Rs. 11,44,609/- dated 21.05.2016 along with delay interest of Rs. 57,42,945/- within 30 days.

44. The Authority observes that as per offer of possession dated 09.05.2014, it provides change in area of the plot as specified above and states that price of

the plot stands revised to Rs. 2,41,02,872/- and raised a demand of Rs. 2,86,08,797/- including delay payment charges amount to Rs. 28,75,272/-. Such letter was followed by another letter dated 28.05.2014, wherein it states that allottees has to make full and final payment of Rs. 28,70,188/- as evident from page no. 97 of complaint. Thereafter, letter dated 24.08.2015 was issued by the respondent wherein reflecting an amount of Rs. 11,26,609/- payable by the complainants-allottees on account of club charges and stamp duty registration of Rs. 1,32,409/- and 9,94,200/- respectively. The complainant during the course of proceedings draws the attention of the Authority to receipt dated 27.05.2015 on page no. 110-111 of complaint wherein it reflects receipt of Rs. 9,64,200 and Rs. 30,000/- on pretext of stamp duty and registration charges. Further, as per letter dated 26.03.2021 on page no. 116 of complaint where the complainants request the respondent-builder to get the sale deed executed followed by another email dated 19.04.2021 on page no. 117 of complaint to which letter dated 28.04.2021 was sent by the respondent wherein intimating cancellation of subject plot. It is pertinent to note that the complainants have already paid an amount of Rs. 2,52,00,000/- against consideration of Rs. 2,41,02,872/- and the respondent-builder has failed to provide on record any reminder letter/email wherein addressing the issue w.r.t payment of/receipt of stamp duty. Moreover, the said amount was already paid way back in 2015 when demanded by the respondent thus, cancellation for a meagre amount and that too after 6 years of abeyance, cannot be held valid.

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45. The respondent also took a plea that the complaint is barred in view that the part completion certificate has already been received in 2014. The Authority observes that after obtaining part completion certificate, the respondent offered the possession of the plot to the complainants along with certain demands. The complainants have already paid an amount of Rs. 2,52,00,000/- towards consideration of Rs. 2,41,02,872/-. No doubt that the rest of the payment beside payment of booking amount of Rs. 5,00,000/- was made after receiving completion certificate dated 05.05.2014, but the fact cannot be ignored it is when the amount was raised by the respondent i.e. at the time of offer of possession. Further, the complainant has approached the Authority seeking relief of possession and setting aside of cancellation dated 12.10.2016 and 24.04.2021. Since the cancellation is already held bad in eyes of law, thus it is concluded that there was continuing cause of action where despite payment of Rs. 2,52,00,000/- by the complainants by 27.05.2015, it has failed to handover the possession of the subject units (plot) and thus, the plea advanced by the respondent-builder with regards to obtaining completion certificate is not tenable.
46. After clearing the position that the said cancellation(s) are not valid. The situation before the Authority is that the respondent-builder has already sold the same to respondent no. 03. Vide proceedings dated 15.11.2022, respondent no. 2 and 3 (hereinafter "R2 & R3"), through their counsels stated at bar that the dispute in question pertains to an alleged sale of the residential plot allotted to the complainants by the respondent no. 1 and thus, R2 & 3 are not privy to

the complaint and hence request for deletion of their names from the array of the parties. The Authority observes that the respondent-builder has sold the subject unit of the complaint to R3. Hence, since the cancellation done by respondent-builder is set aside, thus, no doubt R3 is a proper party to the complaint. As far as R2 is concerned, as per the version of the complainant, R3 is a joint venture of R1 and R2. But as per the version of R2, it is merely a partner in R3 and take plea of Section 3 and 14 of Limited Liability Partnership Act, 2008. Relevant portion of Act is reproduced hereunder: -

*3. Limited liability partnership to be body corporate.*

*(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.*

*(2) A limited liability partnership shall have perpetual succession.*

*(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.*

47. The Authority observes that in view of provision of Section 3 of Limited Liability Partnership Act, 2008 where LLP is considered as "body corporate" having separate legal entity from its partner. Thus, is liable to be sue in its name and there is no need to incorporate name of any of its partner separately to proceed further with the dispute in question of this complaint or otherwise in general and thus, is of view that name of R2 i.e., Birla Estate Private Limited, is to be deleted from array of parties.

48. Coming back to the issues involved that the respondent-builder has already sold the same to respondent no. 03. The respondent no. 03 i.e. Avarna Projects LLP submitted that it has purchased the plot in question after having due diligence and before purchase of said land, a public notice was issued in both

vernacular and English. The Authority is of considered view that the R3 being an innocent buyer has taken due diligence before executing the sale deed dated 14.10.2019. The Authority made reliance to Section 41 of the Transfer of Property Act, 1882 wherein providing concept of "An ostensible owner"; an ostensible owner is a person who has all the indications of ownership and looks like the owner of a property but is not the real owner.

*"41. Transfer by ostensible owner.—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be violable on the ground that the transferor was not authorised to make it: Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."*

Thus, keeping in view the circumstances of the case and principle of ostensible owner, the respondent-builder is directed to allot the complainants a plot of the size of subject unit, with same location and that too at the price, the original booking was done way back in the year 2013 on the basis of application dated 18.10.2012, leading to allotment dated 16.01.2013 within a period of two month from the date of order.

**I.II Direct the respondent no. 1-13 to handover the vacant, peaceful possession of the residential plot.**

49. The respondent-builder has obtained completion certificate on 05.05.2014. Keeping in view the finding of relief no (i), the respondent is directed to offer the possession of alternative plot as per directions in finding on relief no. (i) within a period of two months from date of this order. The complainants are

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also directed to make payments of outstanding dues, if any and thereafter, take the possession of the allotted unit as per obligations conferred upon them vide section 19(10) of Act of 2016.

**I.III Direct the respondent to get the sale deed executed in favour of the complainants and do all the further acts to register the sale deed.**

50. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed/sale deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. The respondent is further directed to get the conveyance deed executed in favour of complainants w.r.t alternative unit.

**I.IV. Direct the respondent to pay damages for delay in handing over of possession and causing mental agony by declining to execute sale deed and cancelling the allotted unit.**

51. The complainants in the aforesaid relief demanding relief of delayed possession charges. In the present complaint, 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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52. Clause 4.2 of sample agreement provides for handing over of possession and is reproduced below:

**“Clause 4.2**

*The developer shall endeavour to hand over the possession of the floor unit within 36 months from the date of execution of this plot buyer's agreement with a grace period of 6 months (Tentative handover date). Notwithstanding the same, the developer shall at all times be entitled to an extension of time from the tentative handover date, if the completion of the colony or the part / portion of the colony where the said floor unit is situated is delayed on account of any force majeure event.*

53. It is a case where despite payment of Rs. 2,52,00,000/- against consideration of Rs. 2,41,02,872/-, the respondent-builder has failed to execute the buyer's agreement between the parties. The complainant has already paid an amount of Rs. 2,52,00,000/- towards sale consideration of subject unit. As per sample agreement placed on record, the due date of possession is to be calculated as 36 months from date of executing buyer's agreement with a grace period of six months. Since no buyer's agreement has been executed inter-se parties, the due date of handing over of possession is calculated from date of allotment i.e., 16.01.2013. As such due date of handing over of possession without grace period comes out to be 16.07.2016.

54. **Admissibility of grace period:** As per clause 4.2 of sample agreement, the respondent-promoter proposed to handover the possession of the said unit within a period of 36 months with a further grace period of 6 months, from 01.01.2016. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional. Therefore, as per

clause 4.2 of the sample agreement, the due date of possession comes out to be 16.07.2016.

**55. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges however, 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.*

56. 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.

57. 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., 08.08.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

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

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

59. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

60. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent 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 4.2 of sample buyer's agreement, the possession of the subject apartment was to be delivered within a period of 36 months along with six months grace period and the same comes out to be 16.07.2016. The respondent has obtaining completion certificate from competent Authority on 05.05.2014. Further, as per directions of the Authority above, the respondent-builder is directed to allot the complainants an alternative plot of the size of subject unit, with same location and that too at the price, the original booking was done way

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back in the year 2013 on the basis of application dated 18.10.2012, leading to allotment dated 16.01.2013 within a period of two month from the date of order. Thus keeping in view the provisions of Act of Section 18 and 19(10) and the fact that the due date of handing over of possession was 16.07.2016, it is concluded that, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreed terms and sample buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.07.2016 till offer of possession plus two months of alternative plot as per the directions of the Authority above; at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**I.V Direct the respondent to pay cost of present complaint.**

61. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357)*, 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense 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 & legal expenses. Therefore, for claiming



compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**J. Directions of the authority:**

62. Hence, the authority hereby passes this order and issues the 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. The cancellation of the allotted unit bearing no. 18 situated in pocket A measuring area 690.33 sq. yds situated in the project namely "Anant Raj Estate", Sector-63, Gurugram is bad in the eyes of law and hence is hereby ordered to be set aside.
- ii. The respondent-builder is directed to allot the complainants an alternate plot of the size of subject unit, with same location and that too at the price, the original booking was done way back in the year 2013 on the basis of application dated 18.10.2012, leading to allotment dated 16.01.2013 within a period of two month from the date of order.
- iii. The respondent-promoter is directed to pay interest for every month of delay from due date of possession i.e., 16.07.2016 till offer of possession plus two months of alternative plot as per the directions of the Authority above; at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- iv. The complainants are also directed to take the possession of the allotted unit as per obligations conferred upon them vide section 19(10) of Act of 2016.



v. The respondent is further directed to get the conveyance deed executed in favour of complainants w.r.t alternative unit.

63. Complaint stands disposed of.

64. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.08.2023



**HARERA**  
**GURUGRAM**