



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	847 of 2022
Date of filing:	28.04.2022
Date of first hearing:	01.06.2022
Date of decision:	21.09.2023

1. Raj Kumar Girdhar ,S/o Sh. Kanwar Bhan
R/o H.No.868, Sector 15-A, Faridabad, Haryana
2. Kanta Dawar, D/o Sh. Suresh Kumar Dawar
R/o H.No.811, Sector 16, Kheri Kalan,
Faridabad, Haryana-121002
3. Suresh Kumar Dawar, S/o Sh. Dayal Chand
R/o H.No.811, Sector 16, Kheri Kalan,
Faridabad, Haryana-121002

.... COMPLAINANT(S)

VERSUS

M/s Puri Constructions Private Limited
Through its Managing Director and other Directors.
Regd. Office: 4-7 B, Ground Floor,
Tolstoy house, 15 & 17 Talstoy Marg,
New Delhi-110001

....RESPONDENT(S)

S. No.	Particulars	Details
1.	Name of the Project	Emerald Court, Pocket D, Luxuria Plots, Amanvilas Sector-89, Faridabad, Haryana
2.	Nature of project	Residential Plotted Colony
3.	Name of the Promoter	Puri Construction Pvt. Ltd.
4.	RERA Registered/Not	Registered vide Registration No. 120 of 2017 dated 28.08.2017
5.	Date of booking	01.07.2021 by paying booking amount of Rs. 10,00,000/-
6.	Plot No.	LX/D/007/P
7.	Plot Area	390 sq yards (326.09 sq.mtrs)
8.	Date of Allotment	19.07.2021
9.	Date of builder Buyer Agreement (BBA)	Not Executed
10.	Basic Sale Price	Rs. 1,17,00,000/-
11.	Amount paid by the Complainants	Rs. 72,00,000/-
12.	Offer of Possession	No offer was given

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. That the complainants had booked a residential plot in "Emerald Court, Pocket D, Luxuria Plots, Amanvilas", a HRERA registered project vide Registration No. 120 of 2017 dated 28.08.2017, situated at Sector-89,



Faridabad, Haryana on 01.07.2021, admeasuring 390 square yards @ Rs. 30,000/- per sq. yards. The total consideration sought by the respondent from the complainants for a plot in the said Project was Rs. 1,17,00,000/- (Rupees One Crore and Seventeen Lakh).

4. That in pursuance to the above, the complainants made a payment of booking amount to the tune of Rs. 10,00,000/- vide receipt dated 01.07.2021 which was issued by the respondent itself. A copy of the payment receipt issued by respondent in favour of the complainants has been annexed as Annexure-1.
5. That the respondent issued an allotment letter dated 19.07.2021 confirming allotment of a residential plot to the complainants. Copy of an allotment letter alongwith the payment plan issued by respondent against payments made by complainants has been annexed as Annexure - 2.
6. That the respondent verbally assured the complainants that a builder-buyer's agreement shall be executed within a few days, and possession of the allotted plot shall be granted soon thereafter. However, despite passage of considerable amount of time after booking of the plot; the respondent did not execute the builder-buyer's agreement, whereas, the respondent kept making further demands for money from the complainants *qua* the allotment.



7. That during the initial conversations over the phone as well as in person, the respondent assured the complainants that the builder-buyer's agreement would be executed as soon as the complainants makes the *ibid* payments sought by them. In fact, the complainants repeatedly requested the respondent to execute a builder-buyer's agreement to solidify the purchase of the allotment and start the registration of the same in favour of complainant-allottees, but to no avail.
8. That the respondent issued a further demand letter dated 19.07.2021 for a further demand of Rs.20,00,000/- to be paid before 31.07.2021. The said demand letter has been annexed as Annexure 3 in complaint file. Thereafter, the respondent started sending out repeated reminders to the complainants for depositing Rs.20,00,000/-, without taking any further action vis-à-vis execution of the said builder-buyer's agreement. That in the month of August 2021, the respondent sent out three reminders to the complainants for making the payment and even raised a further demand of Rs. 80,00,000/-, without fulfilling the statutory requirement of executing the builder-buyer's agreement, as required under section 13(1) of the Real Estate (Regulation & Development) Act, 2016. Copy of the said reminders issued by the respondent in favour of the complainants are annexed as Annexure 4.
9. That, the complainants, being wary of the continuous demands by the respondent in the absence of a buyer's agreement between the parties,



refrained from making the said payments and kept on requesting the respondent for execution of the agreement, to avoid further delays. Whereas, the respondent continued demanding payments more than the said ten percent of the total amount without executing BBA.

10. That after facing relentless coercion from the respondent and apprehending termination of the allotment as well as to avoid further delays, the complainants were compelled to make a payment of Rs. 62,00,000/- vide RTGS Transaction Reference UTR SBINR52021090841175793 dated 08.09.2021 through cheque, proof of which has been attached as Annexure-5, with the hope that now, at least, the respondent would execute the builder-buyer's agreement. However, the respondent neither acknowledged a receipt of the said payment nor did they provide any receipt thereof. Accordingly, the complainants, again vide email dated 21.04.2022 (Annexure A-6) requested the respondent to have the buyer's agreement executed between the parties.
11. That, however, the respondent unilaterally terminated the complainants' allotment vide a back-dated cancellation letter, purportedly issued by them on 07-09-2021, *i.e.*, exactly one day prior to the date when the complainants made the aforementioned payment of Rs. 62,00,000. However, the India-Post Receipt No ED886438397IN vide which the respondent dispatched the said cancellation letter was dated 14.09.2021 (*i.e.* after an entire week of having received the *ibid* amount); meaning



thereby that the cancellation letter was unscrupulously dated as 07.09.2021 just to defeat the legitimate claim of the complainants.

12. That the complainants repeatedly met the executives of the respondent to resolve the issue of arbitrary, unilateral and illegal termination of the allotment to the complainants. However, the respondent neither acknowledged any request of the complainants nor did they hand-over the possession of the said allotted plot to the complainants after executing the builder-buyer's agreement. Furthermore, the respondent was putting forth further illegal and untenable demands and coercing the complainants to make good the escalation of the plot by paying an additional sum @Rs. 10,000/- per sq. yard to revoke the cancellation of the allotment.
13. That on meeting dated 22.04.2022, the complainants, once again, requested the respondent to comply with the aforesaid requests. However, instead of acceding to the above, respondent started threatening the complainants with resale to a third party. A copy of email dated 21.04.2022 written pursuant to the aforesaid meeting is also attached herewith as Annexure-8, which has also not elicited any positive response from the respondent.
14. That the complainants had suffered harassment and inconvenience because of the delay caused in the handing over of possession of the allotment. Due to the said unfair trade practices adopted by the



respondent, the complainants have been subjected to immense misery, mental distress, pain, agony and sheer mental harassment. It has been several months since the time complainants invested such a huge amount in the respondent's project and till date possession has not been delivered, rather much time has been wasted in indulging in unfair trade practices by the respondent themselves. Hence, the present complaint.

C. RELIEF SOUGHT

15. In view of the facts mentioned above, the complainant prays for the following relief (s):-
 - a. Direct the respondent to revoke / cancel / set-aside / expunge the termination letter dated. 07.09.2021 issued on back date on 14.09.2021 being in complete violation of the applicable provisions of the Real Estate (Regulation & Development) Act, 2016.
 - b. Direct the respondent to execute a builder-buyer's agreement and forthwith give possession of the allotment to the complainants in terms of the agreed upon consideration in addition to the amount already paid, which the complainants is ready to pay at the instance of the respondent.
 - c. Direct the respondent to pay compensation to the tune of Rs 10 lacs as well as interest @ 18% per annum on the amount paid to the respondent from the date when the amounts were paid till the date of possession on account of inordinately delaying the handing over of possession and forcing the complainants into unwarranted litigation.



- d. Direct the respondent to, *ad interim*, keep in abeyance any sale, lease, hypothecation or any other act vide which the title / ownership or possession of the allotment would be alienated to a third party in order to avoid further complicating the issue; till the pendency of the instant complaint.
- e. Pass such order or further order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 08.06.2022 pleading therein:

16. That the entire complaint of complainants was based upon absolute lies and complainants were indulged in corrupt practices with an official of the company who was Marketing and Customer Relations Head at that relevant time. True facts being that the antecedents of complainants are that they with their family members are in the business of property dealing and they had setup their property dealing offices in Faridabad. The complainants with his brother Mr. Deepak Kumar Girdhar was running the property dealing and tent house business and they obtained RERA registration of real estate agent in the name of Mr. Deepak Kumar. Further Mr Dawar was also indulged in property dealing business and has an office at H.No.811, Sector-16 Faridabad-121002.



Copy of registration certificate of real estate agent Mr. Deepak Kumar and screenshot of office address of Mr. Dawar are Annexed -R6 (Colly).

17. That the complainants and their family members to earn super normal profits by investing minimal amount in property market usually collided with Mr. Rajesh Srivastava. He firstly submitted an undated application form for allotment of Plot No. 42F and 42G in Pocket-C in project Amanvilas, Sector- 89, Faridabad, on lower investments and lower rates and for the said allotments, they provided a cheque of Rs. 2 Lacs only. After premium being accrued, they transferred the plot No. 42G to Mr. Shanti Swaroop Sharma and plot No. 42F to Mr. Ankit Anand and Kanchan Chaudhary by earning super normal premium on investment Rs 2 Lacs. Further, investment amounting to Rs 2 Lacs against plot no. LX/C/42G/P were transferred directly to the new allottee, Mr. Shanti Swaroop Sharma by said official. After earning the amounts by conspiracy when both plots were transferred in the name of new allottees Plot No. D7 in Luxuria Plots was allotted to complainants on their request vide allotment letter dated 19.07.2021. Copy of letter dated 16.04.2021 and email dated 20.04.2021 by one of the complainants regarding booking of plots no. LX/C/42G/P and LX/C/42F/P already annexed as Annexure R2. Copy of cheque amounting Rs. 2 Lacs against plot no. LX/C/42G/P issued by one of the complainants alongwith application form attached as Annexure R7. Due to conspiracy between



them and official of company the change in plot went smooth as mentioned official of the company was in charge of allotment.

18. That on backing of said official of the company by investing a meagre amount of Rs. 10 lacs which was not even 10% of total sale consideration to be paid at the time of application form and subsequently at time of allotment letter as mentioned in both payment plans, i.e., application form and allotment letter was changed at the behest of complainants by said official of company. The complainants and said official waited to earn super normal profits from April 2021 till September 2021. The management of the company came to know about the wrong doings of the said official in first week of September 2021. During this period management cancelled all plots/units in which said official was involve. The same official guided the complainants to deposit some amount online and to send an email for buyers agreement and kept cancellation letter on hold till online transfer which was then issued on 07.09.2021 and was sent via speed post on 14.09.2021. The call records of the said official to brother of complainants during first week of September clinched the issue. The said official of the company fearing termination resigned from the company. Copy of resignation is Annexure R8.



19. That analysing the facts and circumstances mentioned herein above the conspiracy and corrupt practices are written largely on complainants and said official some of which are as under:
- a. Booking made in April 2021 which was later unilaterally changed to June 2021
 - b. Change in Plot no. 42G to Plot no. 7, which was better located
 - c. Change in payment plan from application form to allotment letter
 - d. Keeping cancellation letter on hold.
20. That the complainants wilfully concealed all the facts from this Hon'ble Authority and in view of the mentioned facts and circumstances and knowing that the allotment of the plot was obtained through dubious means and in fraudulent manner involving the corrupt officials of the respondent, the respondent was ready to refund amount received from complainants with interest from the date of payment till date.
21. That even after such malpractices were brought in the notice of the respondent, they tried to resolve all the issues and requested the complainants for the meeting. Every time Mr. Deepak Kumar Girdhar came for the meeting and no other complainants ever visited the office which is evident from email dated 22.04.2022 sent by one of the complainants. Copy of the email dated 22.04.2022 is annexed as Annexure-R9.



22. That apart from mentioned facts and circumstances, on merits the complainants defaulted in making regular payments and respondent cancelled the allotment vide cancellation letter dated 07.09.2021.
23. That the complainants also admitted that 10% of total sale consideration was payable at the time of application form and subsequently after allotment letter but due to collusion only the payment of Rs. 10,00,000/- was made which was way less than the 10% of sale consideration of said plot. Due to collusion, complainants after making the payment waited for to earn super normal profits but the said official had to leave the company and Complainants were in disarray. For the reason of collusion only, complainants did not bother to make further payment in spite of receiving reminders dated 03.08.2021, 09.08.2021 and 31.08.2021 (Annexure-R-5 Colly) as complainants knew there would be no action taken by the respondent against their plot since the complainants conspired with the official Mr Rajesh Srivastava. During said period complainants after receiving multiple reminders did not utter a word, letter, or email regarding the execution of buyer's agreement. The process of company is that BBA is executed only on receipt of 10% of sale consideration, which was not paid by the Complainants. Regarding cancellation letter dated 07.09.2021 issued due to their failure to make payments by the complainants, it is submitted that, Mr. Rajesh Srivastava communicated same to the complainants regarding



cancellation letter and Complainants deposited Rs. 62,00,000/- to the respondent company on 08.09.2021.

E. REJOINDER FILED BY THE COMPLAINANTS

24. That the complainants filed a rejoinder dated 15.12.2022 to the reply filed by the respondent, submitting that respondent has made an attempt to misguide and derail the focus from the actual facts of the case. The complainants reiterated that the respondent has unjustly and arbitrarily denied the Complainant's allotment of a residential plot in a HRERA-registered project, despite the complainant fulfilling all financial obligations. Respondent is accused of seeking excessive payments from the complainant in contravention of the Real Estate (Regulation and Development) Act, 2016 (RERA). Despite making significant payments, the complainant did not receive the Builder-Buyer's Agreement or possession of the allotted plot. Respondent unilaterally terminated the complainant's allotment, backdating the cancellation letter, which is deemed unethical and illegal. It was also stated by the complainants that the internal discrepancies of the respondent was of no relevance to the present dispute and that the respondent has chosen to fictionalise facts and create an imaginary story which involves "collusion" on part of the complainants to some unrelated person of their company who has no connection whatsoever to the entire case. The wrong doings of an individual employed by the respondents cannot be manufactured into an



elaborate scheme of collusion. Further, there is no substantial evidence supplied by the respondents in this regard.

25. That the complainants further stated that the respondents reply is attempting to divert attention from these core issues and lacking substantial proof. The complainants also asserts that, the respondents written statement is baseless, denying its content as an attempt to deflect from their questionable actions, which are in violation of prevailing law.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

26. During oral arguments, learned counsels for the complainants and respondent reiterated their respective arguments as stated in their written submissions.

G. ISSUES FOR ADJUDICATION

27. Whether the complainants are entitled for seeking the direction against promoter to execute the builder buyer agreement?

H. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

28. The Authority has gone through the rival contentions raised by both parties. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that there is no dispute between the parties with regard to the facts that the complainants had booked a Plot No. LX/D/007/P measuring 390 sq.yds in the Project Emerald Court, Pocket D, Luxuria Plots, Amanvilas



situated at Sector-89, Faridabad, Haryana by paying an earnest money of Rs. 10,00,000/- on 01.07.2021. Thereafter, the said plot was allotted to complainant-allottees vide allotment letter dated 19.07.2021. Plot Buyer agreement has not been executed till date. Total cost of the plot was Rs. 1,17,00,000/- against which complainant has paid Rs.72,00,000/- till date which is more than 60% of the sale consideration. The said payment by complainant-allottees has also been admitted by respondent during the course of hearing.

29. Grouse of the complainants is that respondent vide allotment letter dated 19.07.2021 confirmed the allotment of plot no. LX/D/007/P in favour of complainant-allottees after receiving an earnest money of Rs. 10,00,000/-. The said allotment letter was issued by the respondent along with the payment plan but thereafter instead of executing a builder buyer's agreement, respondent started raising further demands vide reminder letters dated 03.08.2021, 09.08.2021 and 31.08.2021 without executing builder buyer agreement. It was alleged that demand of more than 60% of the sale price without executing BBA is in contravention of the provisions of Section 13 of RERA Act. It was also alleged that the respondent has issued the cancellation letter on 07.09.2021 which is back-dated and has arbitrarily cancelled the allotment of the said plot without any justification.



30. Per contra, Ld. Counsel for respondent raised an objection that complainants are property dealers/ investors in Faridabad and not a consumer; therefore, they are not entitled to file the complaint under section 31 of the Act as the Preamble of the Act itself states that the Act is enacted to protect the interest of consumers of the real estate sector. Further, ld. counsel for respondent contended that complainants have paid a meagre amount of Rs. 10,00,000/- which was not even 10% of total sale consideration. Respondent has sent repeated reminders to the complainants for depositing further sale consideration as duly mentioned in payment plans in allotment letter but complainants did not bother to make further payment. In view of failure to pay the amounts as per demand letters/ reminders issued by respondent, allotment of complainants was cancelled on 07.09.2021. An amount of Rs. 62,00,000/- was paid by complainants on 08.09.2021, i.e., after the issuance of cancellation letter and respondent is ready to refund amount received from complainants along with interest.

31. In this regard, Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims & objectives of enacting a statute but at the same, time preamble cannot be used to defeat the enabling provisions of the Act. Furthermore, 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 allotment, it is revealed that the complainants are buyers and has initially paid an amount of Rs.10,00,000/- to the promoter towards purchase of the plot in his project. At this stage, it is important to stress upon the definition of term allottee under the Act and 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, or 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", it is crystal clear that the complainants are allottees as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred anywhere 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". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd, Vs. Sarvapriya Leasing (P) Lts. And Anr.* has also held that the concept of investor is not been defined or



referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

32. Further, ld. Counsel for complainants alleged that respondent has arbitrarily cancelled the complainant's allotment without any justification. Now, the moot question before the Authority for adjudication is whether the alleged cancellation letter dated 07.09.2021 cancelling the complainants allotment was good in law or not.

In this regard, on examining the documents placed on record, Authority observes that the complainant had booked a plot in the year 2021 and had paid earnest money of Rs.10,00,000/-. Builder Buyer agreement is yet to be executed. Upon payment of the earnest money, the legal right vested in complainant so far is to seek allotment of the plot and thereafter execution of the builder buyer's agreement. However, instead of executing a builder buyer's agreement, respondent started raising demand of Rs. 20,00,000/- to be paid before 31.07.2021 and thereafter raised a further demand of Rs. 80,00,000/- without executing the BBA vide demand letters dated 03.08.2021, 09.08.2021 and 31.08.2021. Nevertheless, complainants being wary of the continuous demands by the respondent in the absence of builder buyer's agreement refrained from making further payments, but as soon complainant-allottees apprehend the termination of allotment by respondent, the complainants further paid Rs. 62,00,000/- vide RTGS transaction dated 08.09.2021



(Annexure 5 of complaint file) and despite receiving more than 60% of sale consideration, respondents terminated the complainants allotment. Complainants counsel has alleged that such termination was made vide a back-dated cancellation letter issued by the respondents along with envelope displaying the postal receipt annexed in complaint file as Annexure 7.

On perusal of cancellation letter dated 07.09.2021 and Indian Post Receipt dated 14.09.2021 (Annexure 7 of complaint file), Authority observes that respondent had terminated the complainants allotment vide a back-dated cancellation letter purportedly issued by them on 07.09.2021., i.e., exactly one day prior to the date when the complainants made the payment of Rs. 62,00,000/- on 08.09.2021. The falsity of entire exercise can be ascertained from a bare perusal of Indian Post Receipt vide which respondents dispatched the said cancellation letter on 14.09.2021. It clearly depicts that the cancellation letter was unscrupulously dated 07.09.2023 just to defeat the legitimate claim of the complainants. Even if it is presumed that the termination letter was dated 07.09.2021, same was set for communication on 14.09.2021. Meaning thereby cancellation of allotment was set into motion only on 14.09.2021, i.e., after receiving a amount of Rs.62,00,000/- on 08.09.2021 and that also without signing/execution of any builder buyer agreement.



Authority further observed that the demand of more than 60% of the Sale Price without executing builder buyer agreement is in contravention of the provisions of Section 13 of RERA Act. That, as per Section 13 (1) of the Real Estate (Regulation & Development) Act, 2016, there is a specific bar on a promoter from demanding an advance sum more than ten percent of the cost of the apartment, plot, or building etc. from a person without first entering into a written agreement for sale with such person and register the said agreement for sale. Section 13 of RERA Act provides that:

“(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.”

Moreover, along with the date of issuance of the said cancellation letter, the contents of the letter were also questionable. Firstly, the reason for the said cancellation cited by the respondent vide its impugned letter was the apparent non-fulfillment of payment sought by them through the reminders. Complainants were very much willing to make the payment, however, their concern was the respondent's conduct of not executing the builder-buyer's agreement, as repeatedly conveyed to them by the Complainants. In fact, the complainants bona fide can be clearly seen from the payment of Rs.62,00,000/- on 08.09.2021 to the respondent in



good faith, to secure the possession of the allotted plot and to get the BBA execution in their favour.

Secondly, as per Section 11 (5) of the Act, the respondent could have cancelled the allotment only in the terms of the builder-buyer's agreement, which is the sole bone of contention in the present case since the respondent have been evading the fulfillment of the said statutory duty on their part but repeatedly seeking payment of full amount in violation of the provisions of the Act. The said Section 11(5) of the Real Estate (Regulation & Development) Act, 2016 is reproduced hereunder:

11. Functions and duties of promoter:

(1) to (4) ***

(5) The promoter may cancel the allotment only in terms of the agreement for sale: Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation with the terms of the agreement for sale, unilateral and without sufficient cause.

Thirdly, vide the impugned cancellation letter, the respondent dastardly made a claim that the complainants refused to execute the builder-buyer's agreement, however, the complainants were the ones running after the respondent for executing the builder-buyer's agreement which can be established through the fact of payment of more than 60% of sale consideration by the complainant-allottees and an email dated 21.04.2022 annexed at Annexure 6 of complaint file wherein complainant was requesting the respondent for execution of BBA. Thus,



the said claim of the respondent in the cancellation letter that the complainants refused to execute builder buyer agreement is outrightly discarded.

For foregoing reasons, the averments of respondent that cancellation was due to non-payment of dues by complainant-allottees and on the refusal by complainant-allottees to execute the builder-buyer's agreement have been outrightly discarded by the Authority.

33. Authority further observed that on the face of demand of Rs.20,00,000 /- and thereafter demand of 80,00,000/- as a pre-condition for executing builder-buyer agreement itself appears unreasonable. The correct course of action in this situation is that after receiving earnest money a builder-buyer agreement has to be executed in which balance consideration to be paid has to be clearly stipulated along with terms of payment. RERA Law does not provide for payment of almost entire consideration before execution of building-buyer agreement. Section-13 of RERA Act provides that not more than 10% money can be demanded without execution of builder-buyer agreement. Section-13, therefore, entitles an allottee to demand execution of builder-buyer agreement in which terms of payment will be mutually settled and only thereafter the allottee is duty bound to make payment in accordance with such terms.

34. It is also observed that promoters have to follow provisions of RERA Act. They cannot make conditions particularly rigorous for any



individual-allottee compared with others. In any case, legal right of the complainant is to demand execution of builder-buyer agreement and then pay money as per terms and conditions settled in the agreement.

35. In light of above provisions of law, reminder letters dated 03.08.2021, 09.08.2021 and 31.08.2021 vide which payment of Rs.20,00,000/- and thereafter 80,00,000/- has been demanded clearly proves that respondents have been demanding amount of about Rs. 1 crore without execution of builder-buyer agreement. Such conduct on the part of respondents is misuse of their dominant position and clear violation of the provisions of Section-13 of the Act as well as violation of standard builder-buyer agreement as provided for in HRERA Rules 2017.
36. For foregoing reasons, cancellation letter dated 07.09.2021 vide which allotment of complainants has been terminated, is hereby quashed. Respondents are directed to execute proper builder-buyer agreement with the complainant strictly in accordance with the format provided in RERA Rules 2017. They may settle reasonable terms of payment in the agreement.
37. Seriousness of the complainant for purchasing the plot is adequately proved because they have already made substantial payment and ready to pay balance consideration immediately after signing of the agreement. Accordingly, respondents are directed to fix a fresh date with their mutual convenience within 30 days of passing of order for execution of



builder-buyer agreement. It is reiterated that no money can be demanded before registering of the agreement. Further, terms of payment may be mutually settled in the agreement and both parties will remain bound by such terms and conditions as stipulated in the agreement.

38. With respect to the relief of possession and delay possession interest sought by the complainant-allottees, Authority is of the view that full contractual relationship between the parties is yet to come in existence. The respondent/promoter is duly bound to execute the agreement in accordance with the standard agreement provided in the RERA Rules, 2017 and charge consideration as per mutual agreement to be arrived at between the parties. Then only offer of possession be made by respondent to complainant-allottees along with statement of accounts stating receivables and payables by both the parties on account of delay payment and delay possession charges. This is a pre-agreement stage for the relief of possession and delay possession interest.
- f. Further, complainants are seeking compensation on account of inordinately delaying the handing over of possession and forcing the complainants into unwarranted litigation. In this regard, it is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be



decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The Adjudicating Officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

I. DIRECTIONS OF THE AUTHORITY

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

(i) Respondent is directed to execute/register the Agreement for Sale (BBA) in respect of Plot No. LX/D/007/P measuring 390 sq.yds in the Project Emerald Court, Pocket D, Luxuria Plots, Amanvilas situated at Sector-89, Faridabad, Haryana sq.mtrs. in favour of complainant within 30 days of uploading of this order.

(ii) The terms of payment of balance cost of the plot shall be in consonance of terms to be agreed in the builder buyer agreement and both parties will remain bound by such terms and conditions as stipulated in the agreement.



40. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]