

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

Complaint no.: 7309 of 2022
Date of decision: 22.02.2024

1. Mr. Jaipal Manav
2. Mr. Amit Manav
3. Mrs. Kavi Manav

All R/O: RZ-101/59 Mohan Nagar, Pankha Road, New
Delhi- 110046

Complainants

Versus

1. M/s M/s BPTP Ltd. (through its managing directors)
2. Mr. C.M. Sharma

Office at: M-11, Middle Circle, Cannaught Circus, New
Delhi-110001

Also at: 28, ECE House, First Floor, Kasturba Gandhi
Marg, New Delhi-110001

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Rajat Tanwar (Advocate)

Shri Harshit Batra (Advocate)

Complainants

Respondent

ORDER

1. 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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details	
1.	Name of the project	"BPTP Terra", Sector-37D, Gurugram, Haryana	
2.	Project area	43 acres	
3.	Nature of project	Group Housing Tower	
4.	DTPC License no.	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
	Validity Up to	04.04.2025	23.10.2019
	Name of licensee	Super Belts Pvt. Ltd. & 4 others	Countrywide Promoters Pvt. Ltd. & 6 others
5.	RERA registered /not registered	Registered vide registration no. 299 of 2017 dated 13.10.2017	
	Validity status	Valid up to 12.10.2020	
6.	Unit no.	T21-1802, 18 th floor, in tower- T21 (Page no. 44 of the complaint)	
7.	Unit area admeasuring	1691 sq. ft. (super area) [Page no. 44 of the complaint]	
8.	Date of flat buyer agreement	28.05.2013 [Page no. 35 of the complaint]	
9.	Date of tripartite agreement	28.05.2013 [Page no. 70 of the complaint]	
10.	Possession clause	Clause 1.6 Commitment Period shall mean subject to Force majeure circumstances: intervention of statutory authorities and purchaser(s) having timely complied with all its obligations formalities or documentation as prescribed/ requested by seller/ confirming party, under this agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp	

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		<p>duty and other charges, the seller/confirming party shall offer the possession of the unit to the not purchaser(s) within period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement whichever is later. (Page no. 42 of the complaint)</p> <p>5. Possession and Holding Charges: 5.1 The Seller/confirming party proposes to offer possession of the unit to the Purchaser(s) within the Committed Period. The seller /confirming party shall be additionally entitled to a grace period of 180 days after expiry of the said committed period for making offer of possession of the said unit. (Page no. 49 of the complaint)</p>
11.	Due date of possession	28.11.2016 (Calculated from date of execution of buyer's agreement i.e., 28.05.2013 being later) Note: - 6 months grace period is not allowed.
12.	Total consideration Sale	Rs.1,35,56,378/- [As per statement of account on page no. 78 of complaint]
13.	Amount paid by the complainants	Rs.1,07,91,234/- plus tax amount i.e., Rs.81,414/- and total amount of Rs.1,08,72,648/- [As per statement of account on page no. 78 of complaint]
14.	Occupation certificate	09.12.2021 [As per page no. 96 of the reply]
15.	Offer of possession	11.12.2021 [As per page no. 77 of complaint]
16.	Termination Letter	11.11.2022 (As per page no 114 of the complaint)
17.	Legal notice sent by the complainant for possession	29.03.2022 (As per page 43 of the complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint.

- I. That in the year 2012-2013 respondent/promoter launched it's one of the projects namely "TERRA- A Eco-Friendly Green Building /Society" at Sector-37D, Gurugram (Haryana). Respondent /promoter by way of various means of advertisements published a lucrative advertisement in newspaper/other media for the public at large thereby inviting the general public to buy the residential flats in the said project. That by way of the aforesaid lucrative marketing strategy and various false and frivolous promises/proposals, respondent/promoter was able to get huge investments from the general public in your aforesaid project.
- II. That attracted with the lucrative marketing strategy and false and frivolous promises/proposals made by the representatives of the respondents, the complainants had also booked a flat/unit on the top floor bearing flat/unit no.T-21/1802, 18th floor, T-21 Tower, admeasuring super built up area 1691 sq. ft. (157.098 sq. mtrs.) on the basic sale price of Rs.5,250/- per sq. ft. which comes to Rs.88,77,750/-. At the time of booking the aforesaid flat/unit, the respondent offered/gave 1% discount to the complainants on the above total sale prices which comes to Rs.88,778/- and as such the complainant had to pay Rs.87,88,972/- for the said flat/unit. Accordingly, the complainants had paid booking amount of Rs.6,00,000/- vide receipt no. 25241 on 07.09.2012 issued by the respondent/promoter.
- III. That a flat buyer agreement was executed between the parties (complainants and the respondent/promoter) on 28.05.2013. It may not be out of place to mention here that the said flat buyer

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agreement was also signed by Shri C. M. Sharma S/o Shri Dev Raj Sharma, being the authorized signatory of the confirming party of the respondent/promoter company.

- IV. That it may not be out of place to mention here that the respondents granted permission to "Indiabulls Housing Finance Ltd." to mortgage the flat/unit no. T-21/1802 and also executed tripartite agreement on 28.05.2013.
- V. That at the time of execution and signing the aforesaid flat buyer agreement, the respondents along with its representative, assured the complainants that the construction will be started very soon and the possession of the said flat/unit shall be handed over within 42 months from the date of flat buyer agreement dated 28.05.2013.
- VI. That based on the assurances of the respondents and its representatives, the complainants have made the required payment on time to time without any delay as per the schedule plan prepared/given by the respondent/promoter but the respondents delayed the project with malafide intentions to cheat the investors including the complainants.
- VII. That the complainants being a law-abiding citizen, has already paid Rs.1,08,72,648/- which includes Rs.81,414/- as tax (Rs.1,07,91,235/- as payment plan + Rs.81,414/- as tax deposited on 19.01.2018). It is important to note here that the amount paid by the complainant till date is more than the settled/booking amount. They have fulfilled their obligation to pay the sale consideration for the said flat/unit within time but it is the respondents who have failed to fulfill their obligation i.e. delivery of possession of the said flat/unit within time to the complainants, as per buyer agreement.

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- VIII. That on 11.12.2021, the complainants received a letter regarding offer of possession for the said flat/unit which is based upon some wrong & concocted figures. The complainants had already paid Rs.1,07,91,235/- + Rs.81,414/- as tax. In the said letter dated 11.12.2021 only an amount of Rs.1,07,91,235/- was reflected and not Rs.81,414/- which was paid/deposited by the complainants as tax. It is important to note here that besides the aforesaid payment, the respondents with malafide intention and oblique motive further raised illegal & unlawful demand of Rs.35,34,144/- towards the complainants in the said false & concocted letter dated 11.12.2021.
- IX. That after the receipt of the said false & concocted letter dated 11.12.2021, one of the complainant namely Mr. Jaipal Manav visited the site office of the respondents and discussed with the representative of the respondents with regard to the said illegal & unlawful demand of Rs.35,34,144/-. It is stated that instead of answering the queries made by the said complainants, the respondent's representative started threatening him for cancellation of their booking and forfeiting the amount already paid by them. Despite repeated requests and demand of the complainant, the said false & concocted demand letter has not been withdrawn neither by the representatives nor by the respondents.
- X. That the complainants had no other option but to serve a legal notice dated 29.03.2022, to the respondent through speed post and courier. Legal notice dated 29.03.2022 was sent to the respondents through speed post, was served upon the respondents on 30.03.2022.
- XI. That thereafter Mr. Jaipal Manav several times talked to the representative of the respondents telephonically and also visited the



site office of the respondents and discussed with their representative with regard to the said illegal and unlawful demand of Rs.35,34,144/-. It is stated that instead of answering the queries made by the complainant, the said representative of the respondents started threatening the complainant for cancellation of their booking and forfeiting the amount already paid by the complainants.

- XII. That the respondent again sent demand notice dated 30.08.2022 and the respondents again with malafide intention and oblique motive further raised illegal and unlawful demand of Rs.27,65,144/- towards the complainants without any basis instead of handing over the possession of the said flat/unit to the complainant. Again Mr. Jaipal Manav talked to the representative on telephone and the said representative assured Mr. Jaipal Manav that the respondent would make necessary corrections in the statement of account. Further, the complainants talked to the representative on telephone and the said representative assured Mr. Jaipal Manave that the respondent would make necessary corrections in the statement of account but to no avail.
- XIII. That the respondent with malafide intention and oblique motive now sent termination/cancellation notice dated 11.11.2022 to the complainants instead of handing over the possession of the said flat/unit to the complainant. It may not be out of place to mention here that the said termination/cancellation notice was duly replied by the complainant vide their reply dated 15.11.2022.
- XIV. That as per buyer agreement the respondent rendered themselves liable to pay interest at the rate of 18% p.a. to the complainant w.e.f. June 2017 till the actual date of handing over the possession of the



said flat/unit to the complainant. it is stated that as per law as well as various judgments of the Hon'ble Apex Court & Regulatory Authorities, the respondent are liable to pay interest at the same rate which the respondent have charged from their clients /customers for all the delayed payments.

C. Relief sought by the complainants:

4. The complainants have filed the present compliant for seeking following reliefs:
 - i. Direct the respondent to handover the physical possession of the allotted unit as per flat buyer agreement dated 28.05.2013.
 - ii. Direct the respondent to withdraw the letter/notices dated 11.12.2021, 23.06.2022, 30.08.2022, 11.10.2022 and 11.11.2021, respectively thereby illegally and unlawfully demanding Rs.35,34,144/- and Rs.27,65,144/- as the complainants have paid already paid the total sale consideration to the respondent or in alternative the Authority may be pleaded to declare the above said letters/notices as null and void.
 - iii. Direct the respondent to pay interest at the rate of 18% p.a. to the complainant's w.e.f. June 2017 till the actual date of handing over the possession of the said flat/unit to the complainants.
 - iv. Direct the respondent to pay a sum of Rs.5,00,000/- to the complainant towards the cost of litigation.
 - v. Direct the respondent to pay the compensation to the complainants for the loss of rent because of non-delivery of the flat to the complainants in time as per rate of rent prevailing in the locality.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed

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in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent has contested the present complaint on the following grounds:
 - I. That at the very outset it is submitted that the name of the respondent no. 2 should be deleted from the array of parties. It is submitted that the respondent no. 2 was only the authorised signatory of the respondent no. 1 acting for and on behalf of the respondent no.1. That the respondent no. 2 has personal relationship with the complainant. Moreover, no specific relief has been sought from respondent no. 2. Therefore, the name of respondent no.2 should be deleted from the array of parties.
 - II. That the complainants have not come before this Authority with clean hands and have suppressed vital and material facts from this Authority. That the complainant being interested in the real estate development of the respondent, known under the name and style of "Park Terra" located at Sector 37-D, Gurugram, Haryana booked a unit in the said project. At the very outset, it is pertinent to mention that the project has all the necessary approvals and permissions. It was granted license no. 83 of 2008 and 94 of 2011 from Director, Town and Country Planning, Haryana (DTCP) and is also registered with the Authority vide registration no. 299 of 2017 dated 13.10.2017.
 - III. That the complainant booked a flat vide an application form dated 07.09.2012, subsequent to which, the complainants were allotted a flat bearing number T21-1802 on 18th floor in Tower T21, tentatively admeasuring super build up area 1,691 sq. ft. It is



submitted that the complainants prior to approaching the respondent/promoter, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regards to all aspects of the project, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents. The complainants consciously and wilfully opted for construction linked payment plan as per their choice for remittance of the sale consideration for the unit in question and further represented to the respondent no. 1 that they shall remit every instalment on time as per the payment schedule.

- IV. That, consequently, a flat buyer's agreement dated 28.05.2013 was executed between the complainant and respondent no.1. It is pertinent to mention here that the flat buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- V. That both the parties were obligated to fulfil their respective obligations as set out under the flat buyer's agreement. That the due date of offer of possession, as per clause 5.1 read with 1.6 of the agreement, is 42 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later with a grace period of 180 days, subject however, to the force majeure circumstances, intervention of statutory authorities and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement. That the due date is calculated from the execution of flat buyer's agreement (28.05.2013) being later as the buildings plan of the project was

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sanctioned on 21.09.2012. Thus, the proposed due date for offer of possession comes out to be 28.11.2016.

- VI. That the construction of the unit was hampered and was subjected to the happening of the force majeure circumstances and other circumstances beyond the control of the company, the benefit of which is bound to be given to the respondent no. 1 in accordance with clause 10 read with 1.17 of the agreement.
- VII. That this stage, it is categorical to note that the respondent no.1 was faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the

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customer. The time taken by the respondent no.1 to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, the respondent no.1 completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- VIII. That the aforementioned circumstances are in addition to the partial ban on construction. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- IX. That additionally, even before the normalcy could resume, the world was hit by the covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various



subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new Covid variant in the country. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.

- X. That from the facts indicated above and documents appended, it is comprehensively established that a period of 252 days was consumed on account of circumstances beyond the power and control of the respondent/promoter, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent no.1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated

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above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the agreement.

- XI. That it needs to be seen that the development of the unit and the project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the complainants, which, the complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainants have delayed the payment against the unit. That the total sales consideration of the unit was Rs.1,35,56,378/- out of which the complainants had/have only made payment of Rs.1,07,91,235/-.
- XII. That it was the obligation of the complainant to make the payments as per the agreed terms and conditions of the agreement. That the timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties as per clause 7.1 of the agreement. That in case of default by the complainants, the complainants bound to make the payment of interest.
- XIII. That the demand letters were raised as per the agreed payment plan however, the complainants had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainant from time to time. That the bonafide of the respondent no.1 is also essential to be highlighted at this instance, who had served request letters at every stage and reminder notices in case of non-payment.

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- XIV. That the respondent no.1 has complied with all of its obligations, not only with respect to the buyer's agreement with the complainants but also as per the concerned laws, rules and regulations thereunder and the local authorities. Despite innumerable hardships being faced by the respondent/promoter, the respondent/promoter completed the construction of the project and applied for the occupation certificate before the competent authority and successfully attained the occupation certificate dated 09.12.2021.
- XV. That only after obtaining the requisite permissions, the respondent no. 1 legally offered the possession of the unit to the complainants on 11.12.2021. It is pertinent to mention that vide letter dated 11.12.2021 regarding the offer of possession, the complainants were also asked to make the requisite payment based on the statement of final dues and complete the documentation required to enable the respondent/promoter to initiate the process of handover of unit and registration of sale deed, however, the complainant never turned up to take the possession of the unit or remit the outstanding sales consideration of the unit.
- XVI. That upon the non-payment by the complainant, the complainants were considered under default under clause 7.4, and upon the failure of the complainants to rectify their default, the respondent no. 1 had the complete right to terminate the unit of the complainant in accordance with clause 7.1 of the agreement.
- XVII. That the complainants stood in the event of default for not making payment, not taking possession of the unit, non-execution of sale deed, and non-payment of statutory dues. Accordingly, the respondent no.1 had a right to terminate the unit as per the agreed terms and conditions under the agreement. That multiple

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opportunity was given to the complainant to rectify their default through the reminder notices dated 23.06.2022 and 30.08.2022 and final demand notice for payment of outstanding amount dated 11.10.2022, however, the complainants willingly and voluntarily chose to not rectify the same, and consequently, the respondent no.1 was constrained to terminate the allotment of the unit of the complainant by issuing the termination letter on 11.11.2022.

XVIII. That accordingly, after termination of the allotment of the unit of the complainant, the complainants were left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the complainant, solely due to the default of the complainant, the respondent no. 1 is well within their right to forfeit the earnest amount along with non-refundable amounts including delayed payment interest, brokerage, processing fees, any monetary benefit given to the purchaser and the statutory dues paid against the unit.

XIX. That the right of the respondent no.1 to validly cancel/terminate the unit arises not only from the agreement but also from the model RERA agreement which also recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

8. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection with regard to mis-joinder/deletion of respondent no. 2 in the present complaint.

9. While filing the complaint the complainant sought relief against M/s BPTP Limited, and Sh. CM Sharma being the authorized signatory of the respondent/promoter. On failure to fulfil their obligation to

complete the project, the complainants approached the authority seeking relief of physical possession and the delayed possession charges against the allotted unit. A perusal of various documents placed on the record shows that respondent no. 2 is an Authorized signatory of respondent no. 1 i.e., "BPTP Limited". The respondent no. 2 is neither necessary nor a proper party in the present complaint. It is not disputed that all the demands raised by the respondent no. 1 and all the receipt was issued of the unit in favour of the complainant was made by the respondent no. 1. Thus, it shows that there is no privity of contract between respondent no. 2 and the complainant and as such the plea of the respondent no. 1 with regard to deletion of name of respondent no. 2 is hereby allowed.

F.II Objection regarding delay due to force majeure circumstances.

10. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and various orders passed by National Green Tribunal (hereinafter, referred as NGT) and Hon'ble Apex Court. Further, the authority has gone through the possession clause of the agreement and observed that as per clause 1.6 of the builder buyer agreement dated 28.05.2013, the respondent-developer proposes to handover the possession of the allotted unit within a period of 42 months from the date of sanction of the building plans and execution of the flat buyer's agreement whichever is later. In the present case, the due date comes out to 28.11.2016. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA etc., were for a shorter duration

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of time and were not continuous being annual feature. Further, all the orders referred to by the respondent are after the lapse of the due date of possession as per the buyer's agreement and one cannot be allowed to take advantage of his own wrong. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

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

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

12. The respondent was liable to handover the possession of the said unit by 28.11.2016 and is claiming benefit of lockdown which came into effect on 24.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to handover the physical possession of the allotted unit complete in all respects.

G,II Direct the respondent to withdraw the letter/notices dated 11.12.2021, 23.06.2022, 30.08.2022, 11.10.2022 and 11.11.2021,



respectively thereby illegally and unlawfully demanding Rs.35,34,144/- and Rs.27,65,144/- as the complainants have paid already paid the total sale consideration to the respondent or in alternative the Authority may pleaded to declare the above said letters/notices as null and void.

G.III Direct the respondent to pay interest @18% per annum on the amount deposited by the complainant with the respondent with effect the date from the June 2018, till the date if actual possession is handed over by the respondent.

13. The complainants submit that they were allotted a unit bearing no. T-21-1802 vide builder buyer agreement dated 28.05.2013, under possession linked payment plan. Thereafter, a tripartite agreement was executed between the parties on 28.05.2013, for the subject unit allotted to them. Complainants paid an amount of Rs.1,07,91,234/- plus Rs.81,414/- as tax against the total sale consideration of Rs.1,35,56,378/-. As per clause 1.6 of the agreement, the respondent was required to hand over possession of the unit within a period of 42 months from the date of sanction if the building plan or execution of flat buyer agreement, whichever is later. The due date of possession comes out to be 28.05.2016. Further, as per clause 5.1 of the buyer's agreement, the respondent/builder is entitled a grace period of 180 days. As far as grace period is concerned, the same is dis-allowed for the reasons quoted above. Therefore, the due date of handing over possession was 28.11.2016.
14. The respondent submitted that the complainants are defaulters and have failed to make payment as per the agreed payment plan. The respondent has issued various reminder cum demand letters to the complainants and requested to pay the outstanding dues, but the complainants have failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated 11.11.2022 vide which the entire amount paid by the

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- complainants was forfeited. Accordingly, the complainant failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 09.12.2021 and thereafter, has offered the possession on 11.12.2021.
15. Further, during proceeding dated 23.03.2023, the counsel for respondent moved an application for mediation and requested for settling the matter amicably. The counsel for complainants had no objection to the mediation process. The case was referred to Adjudicating Officer for mediation between the parties, but no settlement could be arrived. On 25.08.2023, the complainant/allottee present in person has brought notice to the Authority that offer of an incomplete unit was made by the respondent and the complainants are paying heavy interest to India Bulls for the loan raised against the unit. Further, during the proceedings dated 22.02.2024, the counsel for the respondent stated that the respondent is willing and ready to set aside the cancellation and placed on record revised account statement after adjusting delayed possession charges and offered handing over of cheques amounting to Rs.39,61,467/- as full and final settlement and submitted that possession will also be handed over of the allotted unit after furnishing the unit in terms of the specifications in flat buyer's agreement.
16. Based on the afore-mentioned facts and circumstances, it is the determination of the Authority that in accordance with the offer presented by the respondent, it is apparent that the unit in question has not been sold as of yet, and furthermore, no third-party rights pertaining to the said unit have been established. Consequently, based

on this assessment, the Authority concludes that the legal status of the unit remains unchanged, and no transfer of ownership or rights has been taken place. Further, the respondent company has also showed its interest to set aside the termination letter and to restore the unit to the complainants. In view of the above, the respondent shall handover the possession of the unit to the complainants in terms of the flat buyer's agreement.

17. Moreover, the respondent shall pay delayed possession charges at prescribed rate of interest i.e., 10.85 % p.a. w.e.f. 28.11.2016 till the expiry of 2 months from the date of offer of possession (11.12.2021) which comes out to be 11.02.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.IV Direct the respondent to pay a sum of Rs.5,00,000/- to the complainant towards the cost of litigation.

G.V Direct the respondent to pay the compensation to the complainants for the loss of rent because of non-delivery of the flat to the complainants in time as per rate of rent prevailing in the locality.

18. 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.



H. Directions of the Authority:

19. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act.
- i. The respondent/promoter is directed to withdraw the termination letter dated 11.11.2022 and restore the allotted unit of the complainants within a period of 15 days from the date of this order and issue a fresh statement of account after adjustment of delayed possession charges as detailed subsequent direction i.e., @ 10.85% p.a. on the outstanding amount towards complainant/allottee as prescribed under rule 15 of the rules.
 - ii. The respondent/promoter is further directed to pay interest at the prescribed rate i.e., 10.85% p.a. for every month of delay from the due date of possession i.e., 28.11.2016 till 11.02.2022 i.e., expiry of 2 months from the date of offer of possession (11.12.2021).
 - iii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (b) above shall be paid by the respondent to the complainant within a period of 90 days from the date of this order.
 - iv. The respondent is directed to handover the physical possession of the unit after furnishing and completing the unit in terms of the flat buyer's agreement within a period of 30 days and complainants shall take over the physical possession of the unit in terms of the flat buyer's agreement dated 28.05.2013.
 - v. The rate of interest chargeable from the allottees by the promoter, in case of default in making payment shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is

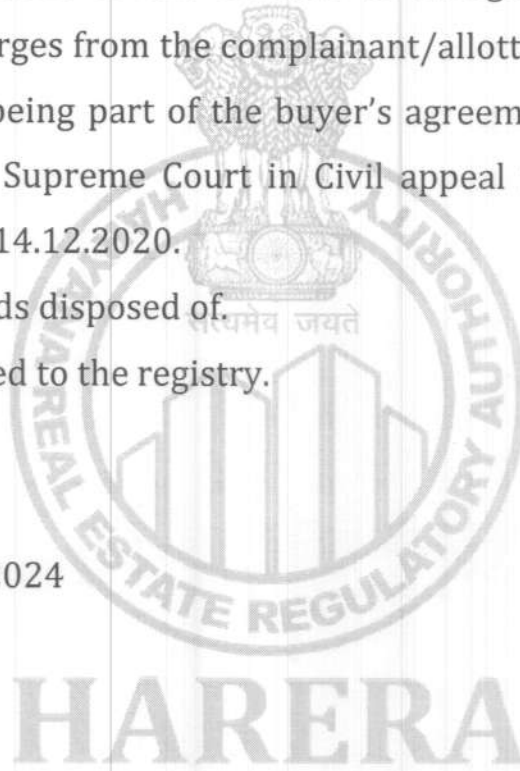
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the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- vi. The respondent/promoter is further directed to execute the conveyance deed upon payment of requisite stamp duty by them as per norms of the state government as per section 17 of the Act within a period of 3 months from the date of this order.
 - vii. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
20. Complaint stands disposed of.
21. File be consigned to the registry.

Dated: 22.02.2024



v.l - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram