

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

Complaint no.: 714 of 2024
Date of decision:- 04.12.2024

Mr. Pankaj Goyal
R/o:-B-33A, Yadav Nagar, Samaypur,
New Delhi-110042.

Complainant

Versus

1. M/s. BPTP Ltd
Regd. office:M-11, Middle Circle,
Connaught Circle, New Delhi-110001.

**Respondent
no.1**

2. M/s. Countrywide Promoters Pvt. Ltd
Regd. Office: 28, ECE House, 1st Floor,
K.G. Marg, New Delhi-110001.

**Respondent
no.2**

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Ms. Priyanka Agarwal (Advocate)

Complainant

Mr. Harshit Batra (Advocate)

Respondents

ORDER

1. The present complaint dated 29.02.2024 has been filed by the complainant/allottee 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 as provided 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:

| Sr. No. | Particulars | Details |
|---------|--|--|
| 1 | Name of the project | "Park-Serene-Spacio"- Sector-37-D, Gurugram. |
| 2 | Nature of the project | Group housing colony |
| 3 | Area of the project | 23.814 acres |
| 4 | Hrera Registered | Registered Vide no. 300 of 2017 dated- 13.10.2017. |
| 5 | DTCP Licence | 83 of 2008 |
| 6 | Allotment letter (Issued to original allttees) | 28.10.2010 (As on page no. 25 of complaint) |



| | | |
|----|---|--|
| 7 | Date of execution BBA (Between original allottee and respondent) | 04.02.2011 (As on page no. 30 of complaint) |
| 8 | Unit no. | K-1401, Floor-1 st , Tower-K (As on page no. 33 of complaint) |
| 9 | Super area | 1225 sq.ft. [Super-Area] (As on page no. 33 of complaint) |
| 10 | Possession clause | CLAUSE 3. POSSESSION <i>1.1 The Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One hundred and Eighty days) after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.</i> <i>[Emphasis supplied]</i> (As on page no. 41 of complaint) |
| 11 | Grace period | 180 days |
| 12 | Due date of possession | 28.04.2014 [Calculated 36 months from the date of allotment + 180 days grace] |

| | | |
|----|--|--|
| | | period] |
| 13 | Nomination letter in favour of complainant | 31.01.2013 (As on page no. 127 of reply) |
| 14 | Basic Sale consideration as per statement of account | Rs.31,02,311/- (As on page no. 143 of reply) |
| 15 | Total amount paid by the complainant | Rs.51,72,502/- (As on page no. 89 of complaint) |
| 16 | Offer of possession | 01.08.2020 (As on page no. 141 of reply) |
| 17 | Occupation certificate | 30.07.2020 (As on page no. 138 of reply) |
| 18 | Conveyance deed | 01.11.2022 (As on page no. 165 of reply) |

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the respondent no. 1 i.e., M/s. BPTP Limited and respondent no. 2 i.e. M/s. Countrywide Promoters Private Limited both are companies incorporated under the Companies Act, 1956 having their corporate office at #28, ECE House, First Floor K.G. Marg, New Delhi - 110001. It is pertinent to mention here that respondent no.1 is the Developer/Builder and respondent no.2 is a collaborator and attorney holder on behalf of the



licensees/landowners. Therefore, both respondents have joint as well as several liabilities towards the complainant. The project in question is known "Spacio Park -Serene" situated in Sector - 37D, Gurugram, Haryana.

- II. That the respondent launched a residential project "SPACIO" situated at Sector-37D, Gurugram, and promoted it extensively through advertisements. The complainant was allured by an enamored advertisement of the respondent and believing the plain words of respondent in utter good faith, the complainant booked a unit in the aforesaid project of the complainant.
- III. That the original allottees, i.e., Mrs. Shilpi Goel & Mr. Jitender Goel booked a 3BHK residential apartment in the project by paying the booking amount of Rs.3,00,000/- and were allotted a unit bearing no. K-140 situated on 14th Floor, in Tower-K admeasuring 1225 sq. ft. vide allotment letter dated 28.10.2010.
- IV. That a Flat Buyers' Agreement was executed between the original allottees and the respondent on 04.02.2011. As per Clause 3.1, the respondents undertook to handover possession of the unit within 36 months from the date of booking, which comes out to be 07.07.2013. The total sale consideration of the unit was Rs.39,17,200/-
- V. That the complainant executed an agreement to sell dated 12.01.2013 with the original allottees in respect of the subject unit and henceforth stepped into their shoes and became the allottee of the said unit. Thereafter, the allotment of the unit was transferred in the name of the complainant by the respondents and nomination letter dated 31.01.2013 was issued in favour of the complainant.



The original allottees had paid a sum of Rs.22,44,028/- to the respondents, and the same was transferred in the name of the complainant by way of Nomination Letter dated 31.01.2013.

- VI. That the complainant was in utter shock and disbelief to see that the respondents had sent an offer of possession letter dated 01.08.2020, with added illegal charges and not even mentioning anything about the delayed possession charges. The complainant decided to visit the project site himself and was in utmost shock and disbelief to see that the internal works of the unit were absolutely incomplete, rendering it inhabitable. Even the work that had been completed were not as per the sanctioned plans.
- VII. That the respondents had also increased the super area of the unit from 1225 sq. ft. to 1303 sq. ft. and offered the carpet area of only 772 sq. ft., which is absolutely illegal and arbitrary. The complainant immediately raised his concern with the respondents, however, they again kept on making vague excuses and assured the complainant that the unit shall be finished at the earliest and kept on raising illegal demands. That the complainant objected to the illegal demands to which the respondents threatened to cancel the allotment of the complainant if he did not succumb to the demands.
- VIII. Thus, afraid of losing the allotment of the unit, the complainant paid a sum of Rs.51,72,502.57/- till date even though the total consideration of the unit was Rs.39,17,200/-. The respondents offered the possession of the unit after a delay of more than 7 years and then only adjusted an amount of Rs.4,55,247/- as compensation, which is absolutely illegal, unjust and arbitrary.

- IX. Thereafter, the respondent issued a No Objection Certificate dated 03.11.2022 in favour of the complainant, giving possession of the unfinished and inhabitable unit only for the purpose of fit outs. That on 04.11.2022, Conveyance deed was executed between the parties and the respondents had assured that the unit shall be completed at the earliest and the complainant would be able to occupy the same before the upcoming festive season.
- X. That the respondent illegally appointed the maintenance agency without providing any prior intimation to the complainant or any notice of Annual General Meeting for the appointment of maintenance agency, and has been charging maintenance charges since then.
- XI. That the respondent had illegally increased the super area of the allotted unit in the offer of possession letter without any justification, adding additional burden on the complainant while the carpet area remains the same.
- XII. That complainant visited the respondent's office multiple times and sent several emails, but to no avail. That the complainant tried to approach the respondent to know the reasons for inordinate delay but the respondents kept on making vague excuses on one pretext or the other.
- XIII. That the malafide intentions and dishonest conducts of the respondents are evident from the very fact that they have become infamous for their *modus operandi* of alluring thousands of innocent people into their trap by way of false advertising and assurances and then extracting huge amounts of monies from

them, then leaving them with a mere "*FIT-OUTS POSSESSION LETTERS*" which has absolutely no significance under law.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to finish all the works in the unit and handover the actual physical possession of the unit.
 - ii. Direct the respondents to pay delayed possession charges along with interest from the due date of possession till the actual final handover of possession.
 - iii. Direct the respondents to refund the amount paid by the complainant as delayed payment interest, illegally charged by the respondents along with interest.

D. Reply by respondent:

5. The respondents have filed a joint written reply and made the following submissions:
 - I. That respondent no. 2 be deleted from the array of parties as it is merely a confirming party to the Agreement. Moreover, no reliefs are sought by the complainants against respondent no. 2. Hence, respondent no. 2 shall be deleted from the array of parties.
 - II. That the original allottees, namely, Ms. Shilpi Goel and Mr. Jitender Goel being interested in the group housing project of the respondent known as "Spacio - Park Serene" applied for purchasing a unit in the abovestated project of the respondent and were allotted a tentative unit bearing no. K-1401 on 14th Floor in Tower K admeasuring tentative super area of 1225 sq. ft.



- III. That thereafter, a Builder Buyer Agreement dated 04.02.2011 was executed between the original allottees and the respondents. It is imperative to mention here that the complainant, after being fully satisfied and agreed with the terms and conditions of the Agreement, voluntarily and wilfully entered into the same.
- IV. That after execution of the Agreement dated 04.02.2011, the original allottees' also executed an "Undertaking and Affidavit" duly agreeing to the tentative nature of the unit. After the execution of the Agreement dated 04.02.2011, the original allottees along with the complainant approached respondent no. 1 and requested him to transfer the unit in favour of the complainant. That acting in utmost *bonafide*, respondent no. 1 transferred the unit in favour of the complainant vide Nomination Letter dated 31.01.2013.
- V. That as per Clause 3.1 of the Agreement, the due date of offer of possession of the unit was 36 months from the date of booking/registration of the unit along with a grace period of 180 days subject to the various force majeure circumstances and timely remittance of outstanding dues by the complainant.
- VI. That the construction of the unit was hampered due to and was subject to the happening of the force majeure circumstances and other circumstances beyond the control of the respondent, the benefit of which is bound to be given to the respondents. At this stage, it is categorical to note that the respondents faced 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

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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 02.11.2015 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 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 construction of the project has been completed diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant.

- VII. That the complainant was nominated on 31.01.2013, i.e., ten months before the expiry of the due date. At that point in time, the complainant had seen the construction status of the project and acknowledged the delay in construction that was already effected by his date of nomination.



- VIII. Without prejudice to the aforementioned, it is submitted that the construction of the project was also subjected to timely payments of due instalments by the complainant and the erstwhile purchasers. That the due date of offer of possession was also dependent on the timely payment by the complainant and the erstwhile purchasers, which, the complainant and the erstwhile purchasers failed to do.
- IX. That despite innumerable hardships being faced by the respondent no. 1, the respondent no.1 completed the construction of the project and applied for the Occupation Certificate before the competent authority on 21.01.2020 and successfully attained the Occupation Certificate on 30.07.2020. That the respondent no.1 legally offered the possession of the unit to the complainant on 01.08.2020. It is pertinent to mention that along with the Offer of possession, the complainant was asked to make the requisite payments based on the Statement of Final Dues and complete the documentation required to enable the respondent no.1 to initiate the process of handover of unit and registration of sale deed. The respondent no. 1 while offering the possession of the unit to the complainant had also credited an amount of Rs.4,55,247/- on account of Loyalty Bonus which is in form of delayed compensation interest.
- X. That after offering possession to the complainant, the physical possession for fit outs was also handed over to him vide NOC for fit outs dated 03.11.2022. That the Conveyance Deed was executed between the complainant and the respondent on 04.11.2022. That after execution of the Conveyance Deed, the contractual

relationship between the parties stands fully satisfied and comes to an end.

XI. That after execution of the Conveyance Deed, the complainant rented out the unit to Mr. Karan Nagpal and Mr. Mukul Tripathi on 01.03.2023. That since then, the unit is being enjoyed by the complainant. That however, with the intent to mislead the Authority, the complainant has wrongfully sought physical possession.

6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

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

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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;

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I. Objection regarding wrongful impleadment of respondent no.2 in the array of parties.

11. The respondents have raised an objection of wrongful impleadment of respondent no.2 i.e., M/s. Countrywide Promoters Pvt. Ltd. in the array of parties. The respondent no.1 stated that respondent no. 2 is only a confirming party in the Agreement and no specific relief has been sought by the complainant from respondent no.2.

12. As per record available the respondent no.2 is a Confirming party to the Agreement dated 04.02.2011 and was granted licence by the

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Director, Town and Country Planning, Haryana vide licence no. 83 of 2008 and 94 of 2011. The respondent no. 2 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).

13. Promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

"2. Definitions. — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i)

(ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures there; or

(iii) xxx

(iv) xxx

14. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas, the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. In view of the same, the contention/objection of respondent no.1 stands rejected.

F.II. Objections regarding force majeure circumstances due to which the construction got delayed.

15. The respondent no.1 has raised the contention that the construction of the project, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction and development activities, restrictions on usage of water. The plea of the respondent regarding various orders of the NGT and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent no.1 leading to such a delay in the completion. The due date of offer of possession of the unit is 28.04.2014.

16. Thus, the respondent no.1 cannot be given any leniency based on aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong. Moreover, the unqualified grace period of 180 days has already been allowed and thus no further relief in regard to this is required to be granted to the respondent no.1.

F.III. Whether the complainant can claim delayed possession charges after execution of the conveyance deed .

17. The respondent no.1 stated that the conveyance deed of the unit has already been executed in favour of the complainant on 01.11.2022 and the transaction between the parties stands concluded upon the execution of conveyance deed.

18. The respondent no.1 has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either

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party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.

19. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.
20. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
21. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as ***Varun Gupta V/s Emaar MGF Land limited and***

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others and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

22. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainant/allottee retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

G. Findings on the relief sought by the complainant.

G.I Direct the the respondent the respondents to finish all the works in the unit and handover the actual physical possession of the unit.

G.II Direct the respondents to pay delayed possession charges along with interest from the due date of possession till the actual final handover of possession.

23. The aforementioned reliefs are interrelated and thus are being addressed together. In the present complaint, the original allottees i.e., Mrs. Shilpi Goel and Mr. Jitender Goel booked a unit with the respondent no.1 and acquired unit numbered K-1401 on 1st floor of Tower-K, measuring 1225 sq. ft. for a basic sale consideration of Rs.31,02,311/- in the project "Spacio" being developed by respondent no.1. The unit was allotted to the original allottees via an allotment letter dated 28.10.2010, followed by the execution of a Flat Buyer's Agreement between the original allottees and the respondent no.1 and respondent no.2 on 04.02.2011. The original allottees and the complainant entered into an agreement to sell and



thereafter, the unit was endorsed in the name of the complainant via nomination letter dated 31.01.2013. According to clause 3.1 of the aforementioned agreement, the respondent committed to handing over possession of the unit to the complainants by 28.04.2014. The said clause is reproduced below:

" Clause 3.1 "Possession"

The Seller/Confirming Party proposes to handover the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180(One hundred and Eighty days) after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.
[Emphasis supplied]

24. Therefore, the due date for the delivery of possession to the complainants was 28.04.2014. However, respondent no.1 received the occupation certificate for Tower-K from the competent authorities on 30.07.2020 and subsequently extended an offer of possession to the complainant on 01.08.2020. The complainant has paid a total of Rs.51,72,502/- towards the basic sale consideration of Rs.31,02,311/-, as evident from the Statement of Accounts annexed on page no. 89 of the complaint.
25. The complainant submitted that the respondents made an offer of possession to him on 01.08.2020 and adjusted an amount of Rs.4,55,247/- as compensation which is absolutely unjust. Thereafter, the respondent no.1 issued a No Objection Certificate on 03.11.2022 giving possession of the unfinished unit to the complainant. The conveyance deed has also been executed on 01.11.2022.

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26. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges along with interest on the amount paid. 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.

"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.

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

28. 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.

29. 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., 04.12.2024 is 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
30. 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. जयते

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;"*

31. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is of the view that even though the respondent no.2 was a confirming party to the agreement but respondent no.1 was primarily responsible for construction and completion of the unit of the complainant and all the transactions took place between respondent no.1 and the complainant right from the allotment of the unit till the offer of possession. The respondent no.1 is in



contravention of the section 11(4)(a) of the Act by failing to deliver possession by the agreed-upon date in terms of Clause 3.1 of the agreement dated 04.02.2011. As per the agreed terms of the agreement, the respondent no.1 had to offer possession of the unit to the complainants by 28.04.2014. Despite the complainant having paid more than 100% of the sale consideration, respondent no.1 failed to fulfill its obligation and did not deliver possession of the unit on time. The respondent no.1 made an offer of possession on 01.08.2020, after obtaining the occupation certificate from the relevant authorities on 30.07.2020. The conveyance deed has been executed between the complainant and the respondent no.1 on 01.11.2022.

32. Vide proceedings dated 13.11.2024, the complainant counsel has submitted that the possession of the unit has been handed over to the complainant on 03.11.2022. Thus, no direction w.r.t handing over possession are required.
33. 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 no.1 is established. In the interest of justice the Authority is of the view that the complainants, shall be paid, by the respondent no.1, interest for every month of delay from due date of possession i.e., 28.04.2014 till the offer of possession plus 2 months after obtaining the occupation certificate or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules after deducting any amount paid

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by respondent no.1 to the complainant on account of delay possession charges.

G.III. Direct the respondents to refund the amount paid by the complainant as delayed payment interest, illegally charged by the respondents along with interest.

34. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainant could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than statutory benefits, if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

H. Directions of the Authority

35. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

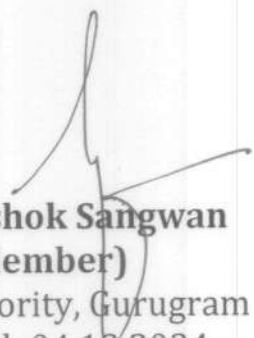
- i. The respondent no.1 is directed to pay interest for every month of delay from due date of possession i.e 28.04.2014 till the offer of possession plus two months after obtaining the occupation certificate from the competent authorities or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of

2016 read with rule 15 of the rules after deducting any amount paid by respondent no.1 to the complainant on account of delay possession charges.

ii. The respondent no.1 shall not charge anything from the complainant which is not part of the agreement.

36. Complaint stands disposed of.

37. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.12.2024



HARERA
GURUGRAM