

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

**Complaint no.:** 2638 of 2023

**Date of decision:-** 04.12.2024

1. Mr. Rajiv Kulshreshtha
2. Mrs. Priyanka Kulshreshtha

**Both R/o:-** House No.-103/9, Near Dronacharya  
Mandir, Subhash Nagar.

**Complainants**

**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, 1<sup>st</sup> Floor,  
K.G. Marg, New Delhi-110001.

**Respondent  
no.2**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Sukhbir Yadav (Advocate)

**Complainants**

Sh. Harshit Batra (Advocate)

**Respondents**

**ORDER**

1. The present complaint dated 13.06.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation

and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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.	Project Area	23.814 acres
4.	DTCP license no.	License No.-83 of 2008
5.	HRERA Registered	Registered Registration no. 300 of 2017 Dated-13.10.2017. Validity upto 12.10.2020
6.	Date of booking	31.08.2010 (As on page no. 55 of reply) [Note: Vide proceedings dated 07.08.2024,

		the same has been inadvertently recorded as 07.09.2010. Thus, the same stands rectified]
7.	Unit no.	Flat no. Q-306, Tower-Q (As on page no. 31 of complaint)
8.	Unit area	1000sq.ft. [Super-Area] (As on page no. 31 of complaint)
9.	Allotment letter	12.11.2010 (As on page no. 31 of complaint)
10.	Date of execution of Flat Buyer's Agreement	05.04.2011 (As on page no. 35 of complaint)
11..	Possession clause	<p><b>Clause 3. Possession</b></p> <p><i>3.1 The Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller//Confirming partyproposes to handover possession of th Flat to the Purchaser(s) <b>within a period of 36 months from the date of booking/registration of the flat.</b> The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of <b>180(One Hundred and Eighty) days</b>, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.</i></p>
12.	Due date of possession	<p><b>28.02.2014</b></p> <p>[Calculated 36 months from the date of booking i.e., 31.08.2010 + 180 days grace period]</p> <p>[Note: Vide proceedings dated 07.08.2024, the same was inadvertently recorded as 07.01.2014, thus the same stands rectified]</p>

13.	Total sales consideration	Rs.48,59,353/- (As per S.O.A at page no. 83 of complaint)
14.	Total amount paid by the complainant	Rs.35,29,895/-
15.	Cancellation letter	11.11.2022
16.	Occupation certificate	15.01.2021
17.	Offer of possession	29.01.2021 (As on page no. 81 of complaint)

**B. Facts of the complaint:**

3. The complainants have 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 in September 2010, the complainants came to know about the project through an advertisement and contacted the marketing staff of the respondent(s). Thereafter, the complainants visited the

project site as well as the sales office of the respondents, there the marketing staff of the respondent(s) allured the complainants by presenting a rosy picture of the project.

- III. That being allured by the presentation and assurance of the respondents', the complainants booked a flat on 03.09.2010, bearing no. Q-306 in Tower - Q having a super area of 1000 sq. ft. in the project and made a payment of Rs.2,71,000/- against the booking amount and the payment receipt for the same was issued by respondent no. 1 on 07.09.2010. It is pertinent to mention here that the total sale consideration of the unit was Rs.36,07,000 after adjusting discount of Rs.1,10,000/-.
- IV. That on 12.11.2010, an allotment cum demand letter was issued by the respondent(s) and in the said letter a demand of Rs.5,01,550/- was raised and the same was paid by the complainants on 07.10.2011.
- V. Thereafter, on 05.04.2011, a Flat Buyer Agreement was executed between the respondents and the complainants. As per clause No. 3.1 of the said Agreement, the respondents undertook to handover the possession of the unit within 36 months from the date of booking/registration of the unit . It is pertinent to mention here that the said flat/unit was booked on 07.09.2010, therefore, the due date of possession was 07.09.2013.
- VI. Thereafter, on 27.04.2012, the respondent(s) sent an email to the complainants and raised a demand of Rs.2,97,052/- on account of "casting of 6<sup>th</sup>-floor slab". It is relevant to mention here that the complainants availed a Home loan from HDFC Bank and in lieu of the said demand raised by the respondent(s) in its email, the

complainants sent an email on 04.05.2012 to the HDFC Bank and asked for disbursement of an amount of Rs.2,97,052/- in favour of the respondent(s).

- VII. That the complainant received an email from the bank that a cheque in lieu of the above-stated demand cannot be disbursed as the approved plans of the project in question are pending from respondent(s)/builders. Thereafter on 19.05.2012, the complainant sent an email to the respondents' and asked about the approval of the project. However, no response was received from the respondents' side. It is pertinent to mention here that the complainants have been paying all the demands raised by the respondent(s) in a timely manner and also, paid the above said the demand of Rs.2,97,052/- despite the hold on disbursement by the bank.
- VIII. That on 21.10.2014, the complainant (Mr. Rajiv Kulshreshtha) sent an email to the respondent and reiterated all his concerns pertaining to the possession of the unit purchased by the complainants. Thereafter, on 01.02.2016, the complainants received an email from the respondents' and it was stated in the email ***that the possession shall be given by July 2018.***
- IX. That the due date of possession was September 2013 and March 2014 (with a grace period of 180 days), however, the respondents' have failed to deliver possession of the unit on or before the due date of possession and now, the respondents have extended the date to July 2018, no specific date of the possession is mentioned in the said email.

- X. In revert to the said email, the complainants on 01.02.2016, sent an email to the respondents and raised their grievance pertaining to the change of the date of the possession and also, asked for the delayed possession charges and again, an email full of false assurances was received by the complainants sent by the respondents in revert on 01.04.2016.
- XI. That on 27.08.2020, the respondent(s) issued a statement of account and as per the statement of account, the complainants have paid Rs.35,29,895/- which is more than 97% of the total sale consideration and yet, the possession of the unit of the complainant has not been delivered to them.
- XII. On 29.01.2021, the respondents' issued an offer of possession. It is pertinent to mention here that the area of the unit was increased from 1000 sq.ft to 1079 sq.ft. without obtaining the consent of the complainants. It is further pertinent to highlight here that the respondents' have levied various illegal charges in the offer of possession under the heads of cost escalation, electrification charges, Service Tax, GST, and have raised a demand of Rs.15,82,458/-.
- XIII. That on 29.01.2021 the Respondent sent a demand invoice for Rs.1,16,305.92/- generated by a company "Business Park Maintenance Services Pvt. Ltd." against the subject unit. It is pertinent to mention here that there is no contract between the complainants and the Business Park Maintenance Services Pvt. Ltd., therefore, the complainants are not under the obligation to pay the maintenance. Moreover, the offer of possession dated 29.01.2021 is not a valid offer of possession and the respondents

had not paid the delayed possession interest from the due date of possession as per the Act, 2016.

- XIV. That on 15.03.2021, the respondents' sent an email as well as the demand letter to the complainants and raised a demand of Rs.15,82,458/-. Thereafter, several emails have been exchanged between the parties and various reminder letters were sent by the respondents'. Meanwhile, the complainants filed a complaint before the Hon'ble NCDRC vide consumer complaint No. 13 of 2021 titled as "Pankaj Goel & Ors. Versus BPTP". It is pertinent to mention here that the Complainants have withdrawn the said consumer complaint.
- XV. That the respondents' sent a Termination/Cancellation Letter to the complainants on 11.11.2022. The respondents' terminated the allotment of the unit on account of non-payment of outstanding dues. It is relevant to highlight here that the complainants have already paid more than the 97% of the total sale consideration and still did not get a valid offer of possession and have not paid the delayed possession charges either.
- XVI. That due to failure of the respondents' to fulfil their commitments as per the terms and conditions of the Builder Buyer agreement, the complainants have been unnecessarily harassed mentally as well as financially. Hence, the present complaint.

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

4. The complainants have sought following relief(s):
- i. Direct the respondent to set aside the termination letter dated 11.11.2022.



- ii. Direct the respondent to pay the delayed possession charges from the due date of possession till the actual handover of the flat.
- iii. Direct the respondent to issue a fresh offer of possession after withdrawing the arbitrary demands, correcting errors of omission and commission in the computation of various amounts, and after the credit of delayed possession interest from the due date of possession till the date of the fresh offer of possession or handover of possession, whichever is later.
- iv. Direct the respondent to handover physical possession of the unit, complete in all aspects.
- v. Direct the respondent to provide the calculation of carpet area, super area and common loading of the flat.
- vi. Restrain the respondent(s) from charging cost escalation (cost escalation is wrongly computed).
- vii. Restrain the respondents' from charging STP and electrification charges.
- viii. Restrain the respondents' from charging GST as the due date of possession was much before July 2017 as the GST was implemented from July 2017 only.
- ix. Restrain the respondents' from charging Administrative Charges or additional FFC, either directly, or through Business Park Maintenance Services Company (BPMS), or such other entities appointed by the respondents to provide maintenance or other services.
- x. Restrain the respondents' from force the complainants to sign the undertaking/indemnity for possession of the flat.

- xi. Direct the respondents' to comply with the report submitted by the committee before the Authority.

**D. Reply by respondent:**

5. The respondents by way of written reply have filed a joint reply and made following submissions:
  - I. At 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 complainants being interested in the group housing project of the respondent no. 1 known as "SPACIO - PARK SERENE" applied for the purchase of the unit in the project vide application form dated 03.09.2010. Pursuant thereof, the complainants were allotted a tentative unit bearing no. Q-306, 3<sup>rd</sup> Floor, Tower Q admeasuring tentative super area of 1000 sq. ft.
  - III. That thereafter, a Builder Buyer Agreement was executed between the complainants and the respondents on 05.04.2011. 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 complainants.
  - IV. That, as the booking of the unit was done by the complainants on 03.09.2010 the *proposed* due date of offer of possession of the unit comes out to be 03.03.2014. 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.

- V. That a period of 196 days were consumed on account of circumstances beyond the power and control of respondent no.1, 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 above and therefore the same is not to be taken into reckoning while computing the period of completion of construction as has been provided in the Agreement.
- VI. That it must also be noted that the respondent no. 1 had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants as per Clause 14 of the Agreement
- VII. That it was the obligation of the complainants to make the payments as per the agreed terms and conditions of the agreement. That timely payment was the essence of the Agreement executed between the parties and in case of default by the complainants, the complainants were bound to make the payment of interest.
- VIII. That the complainants delayed in remitting the due instalment on time due to which various demands and reminder letters were also issued in favour of the complainants. The respondents sent various demands and reminder letters in order to inform the complainants regarding the due instalments.

- IX. That the complainants failed to make payment of the instalments against the total sales consideration of the unit and hence, the complainants cannot be allowed to take benefit of her own wrong and the present complaint is thus liable to be dismissed with costs on this ground alone.
- X. That despite innumerable hardships, respondent no.1 completed the construction of the project and attained the Occupation Certificate on 15.01.2021. That respondent no.1 legally offered possession of the unit to the complainants on 29.01.2021. It is pertinent to mention that vide letter dated 29.01.2021 regarding the offer of possession, the complainants were also asked to make the requisite payments based on the Statement of final dues. However, the complainants never turned up to take the possession of the unit or remit the outstanding sales consideration of the unit.
- XI. That the *bonafide* of the respondents are categorical to note at this stage that the respondent no.1 had at the time of Offer of Possession already credited an amount of Rs.3,60,618/- on account of delayed compensation.
- XII. That upon the non-payment, the respondent no. 1 had the complete right to terminate the unit. Hence, the termination has been validly made and the complainants have no right or lien over the unit and hence, the present complaint is bound to be dismissed.
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.1 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 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 Objection regarding Force Majeure circumstances:**

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 no.1 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. Thus, the respondent no.1 cannot be given any leniency based on aforesaid reasons as it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainants.**

**G.I Direct the respondent to set aside the termination letter dated 11.11.2022.**

**G.II Direct the respondent to pay the delayed possession charges from the due date of possession till the actual handover of the flat.**

**G.III Direct the respondent to issue a fresh offer of possession after withdrawing the arbitrary demands, correcting errors of omission and commission in the computation of various**

amounts, and after the credit of delayed possession interest from the due date of possession till the date of the fresh offer of possession or handover of possession, whichever is later.

**G.IV Direct the respondent to handover physical possession of the unit, complete in all aspects.**

16. The aforementioned reliefs are interrelated and thus are being addressed together. In the present complaint, the complainants booked a unit on 31.08.2010 and acquired unit numbered Q-306 on 3<sup>rd</sup> floor of Tower-Q, measuring 1000 sq. ft. for a basic sale consideration of Rs.27,50,000/- in the project "Spacio" being developed by the respondent no.1. The unit was allotted to the complainants via an allotment letter dated 12.11.2010, followed by the execution of a Flat Buyer's Agreement on 05.04.2011. According to clause 3.1 of the aforementioned agreement, the respondent no. 1 committed to hand over possession of the unit to the complainants by 07.01.2014. The said clause is reproduced below:

**" Clause 3.1 "Possession"**

*Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, 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. The Seller/Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to*



*the handing over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat. In case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(S) for an extension of the time for taking over possession of the Flat.*

*[Emphasis supplied]*

17. Therefore, the due date for the delivery of possession of the unit to the complainants was 28.02.2014. However, respondent no.1 received the occupation certificate for Tower-Q from the competent authorities on 15.01.2021 and subsequently extended an offer of possession to the complainants on 29.01.2021. It is evident from various payment receipts annexed with the complaint that the complainants have paid a total of Rs.35,29,895/- towards the basic sale consideration of Rs.48,59,353/-, which constitutes more than 50% of the basic sale price for the subject unit.
18. On 11.11.2022, respondent no.1 cancelled the unit after issuing multiple reminders to the complainants for the payment of the outstanding dues. These reminders were sent by respondent no.1 to the complainants on 15.03.2021, 18.08.2021, and 03.12.2021. Subsequently, on 14.01.2022, respondent no.1 issued a final demand notice to the complainants for the payment of the outstanding amounts.
19. The complainants submitted that the respondents made an offer of possession to them on 29.01.2021, along with a demand for Rs.13,29,458/- and stamp duty charges of Rs.2,53,000/-, resulting in a total of Rs.15,82,458/-. The complainants contended that these demands were not in accordance with the terms and conditions of the Agreement executed between the parties. They further asserted that the demands were unlawful, which led them to refrain from

making the payment. Vide the present complaint, the complainants have expressed their willingness to pay the outstanding dues and take possession of the unit.

20. In the present complaint, the complainants intends to continue with the project and are 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.*

21. **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."*

22. 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.
23. 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%.
24. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent no.1 which is the same as is being granted to the complainants in case of delayed possession charges.

26. 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 as per Clause 3.1 of the agreement dated 05.04.2011. As per the agreed terms of the agreement, the respondent no.1 had to hand over possession of the unit to the complainants by 28.02.2014. Despite the complainants having paid more than 50% of the total sale consideration, respondent no.1 failed to fulfill this obligation and did not deliver possession of the unit. The respondent made an offer of possession on 29.01.2021, after obtaining the occupation certificate from the relevant authorities on 15.01.2021. The respondent issued several reminders to the complainants to settle the outstanding dues and take possession, but the complainants did not respond. As a result, respondent no.1 cancelled the unit on 11.11.2022.
27. Vide proceedings dated 11.09.2024, the Authority directed respondent no.1 to submit an affidavit confirming whether any third-party rights had been created in the subject unit. In compliance with the Authority's order, respondent no.1 submitted an affidavit stating that no third-party rights have been created in

the subject unit, and that the unit remains in favor of the complainants.

28. In view of the given circumstances, the complainants' willingness to pay the outstanding dues and take possession of the unit, also in light of the fact that no third-party rights have been created in the subject unit, the respondent no.1 is directed to reinstate the unit in favor of the complainants. The complainants are further directed to clear the outstanding dues and take possession of the unit within sixty days from the date of this order.

29. Further, for 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 and 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., 28.02.2014 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 by respondent no.1 to the complainants on account of delay possession charges, if any.

**G.V. Direct the respondent to provide the calculation of carpet area, super area and common loading of the flat.**

30. As per section 19(1) of Act of 2016, the allottee is entitled to obtain information relating to sanctioned plans, layout plans along with

specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent no.1 is directed to provide the area calculation relating to super area, loading and carpet area to the complainants within a period of one month from the date of this order.

- G.VI. Restrain the respondent(s) from charging cost escalation (cost escalation is wrongly computed).**
- G.VII. Restrain the respondents' from charging STP and electrification charges.**
- G.VIII. Restrain the respondents' from forcing the complainants to sign the undertaking/indemnity for possession of the flat.**
- G.IX. Direct the respondents' to comply with the report submitted by the committee before the Authority.**
- G.X Restrain the respondents' from charging GST as the due date of possession was much before July 2017 as the GST was implemented from July 2017 only.**
- G.XI. Restrain the respondents' from charging Administrative Charges or additional FFC, either directly, or through Business Park Maintenance Services Company (BPMS), or such other entities appointed by the respondents to provide maintenance or other services.**
31. Regarding the project "Park-Serene-Spacio", the committee chaired by Sh. Manik Sonawane, IAS (retired), Sh, Lakmi Kant Saini, C.A and Sh. R.K. Singh, CTP (retired), issued comprehensive recommendations. The respondent no.1 is directed to issue demands in accordance with the committee's recommendations, as these have been explicitly addressed in the report. Any demand, if

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made by the respondent no. 1 in contravention of the said committee's report shall be illegal.

#### **H. Directions of the Authority**

32. 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 re-instate the unit in the favour of the complainants and pay interest for every month of delay from due date of possession i.e 28.02.2014 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 by respondent no.1 to the complainants on account of delay possession charges, if any.
  - ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. The rate of interest chargeable from the allottees/complainants by the respondent no.1, shall be charged at the prescribed rate i.e., 11.10% by the respondent no.1 which is 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.

- iv. The respondent no.1 is directed to handover possession of the unit to the complainants after receiving the outstanding dues within a period of one month and thereafter execute conveyance deed in favour of the complainants in terms of section 17(1) of the Act of 2016 on payment of the outstanding dues, stamp duty and registration charges as applicable, within one month after receiving the payments.
- v. The respondent no.1 is directed to provide the area calculation relating to super area, loading and carpet area to the complainants within a period of one month from the date of this order.
- vi. The respondent no.1 is directed to issue demands in accordance with the recommendations of the committee report of Sh. Manik Sonawane, IAS (retired) , as these have been explicitly addressed in the report.
- vii. The respondent no.1 shall not charge anything from the complainants which is not the part of the agreement.
33. Complaint stands disposed of.
34. File be consigned to registry.

**Ashok Sangwan**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.12.2024