

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

**Complaint no. : 133 of 2024**  
**Complaint filed on : 16.01.2024**  
**Date of order : 25.10.2024**

**Uma Chandernain Oberoi**

**R/o: - Farmhouse No. 9, Kapashera Estate, Kapashera,  
South West Delhi-110037**

**Complainant**

**Versus**

- 1. BPTP Limited,**
- 2. Anjali Promoters and Developers Pvt Ltd**
- 3. Countrywide Promoters Pvt Ltd.**

**Regd. Office - OT-14, 3<sup>rd</sup> Floor, Next Door Parklands,  
Sector - 76, Faridabad - 121004**

**Respondents**

**CORAM:**

**Shri Vijay Kumar Goyal**

**Member**

**APPEARANCE:**

**Shri. Sukhbir Yadav, (Advocate)**

**Complainant**

**Sh. Harshit Batra, (Advocate)**

**Respondents**

**ORDER**

1. The present complaint 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	Centra One, Sector-61, Gurugram
2.	Nature of the project	Commercial Colony
	Area of project	3.675 acres
3.	RERA Registered/ not registered	Registered vide registration no. 28 of 2023 dated 30.01.2023
4.	License no. and validity	277 of 2007 dated 17.12.2007, valid upto 16.12.2019
5.	Unit no.	014-1401, 14 <sup>TH</sup> floor [page 72 of complaint]
6.	Unit area admeasuring	1000 sq. ft. [as per R-1 at pg. 24 of reply]
7.	Date of allotment in Parklands	15.07.2006 [Page 39 of complaint]
	Date of allotment in Centra One	14.08.2008 [as mentioned by complainant in proceedings dated 27.09.2024, and not objected by respondent]
8.	Date of space buyer's agreement for BPTP, Centra One	15.12.2008 - Unexecuted [Page 41 of complaint]
9.	Possession Clause	"2. Possession 2.1 The Possession of the said premises shall be endeavoured to be delivered to the Intending purchaser by 31 <sup>st</sup> December, 2011..." [Page 50 of complaint]
10.	Due date of possession	31.12.2011 [as per possession clause in the draft of space buyer's agreement.]
11.	Total sale consideration	Rs.71,01,857/- [page 39 of complaint]





12.	Amount paid by the complainant	Rs.70,00,000/- [as per letter of receipt received by respondent confirming amount paid by complainant at page 83 of complainant]
13.	Occupation certificate /Completion certificate	09.10.2018 [as per R-2 at pg.27 of reply]
14.	Offer of possession	19.11.2018 [Ann. R-2 at pg. 29 of reply]

**B. Facts of the complaint**

- i. That all three respondents i.e., BPTP Limited, Anjali Promoters and Developers Private Limited & Countrywide Promoters Pvt Ltd. are jointly & severally liable towards the complainant and the project in question is known as "Centra-One", Sector - 61, Gurugram.
- ii. That in 2006, the complainant received a marketing call from the office of the respondents i.e., for booking a plot in a residential project being developed by the respondents in the name of "Parklands", situated in Faridabad. Thereafter, the complainant visited the project site and being allured by the representations of the marketing staff of the respondents and being relying on representation & assurances of the respondent(s), the complainant booked a plot admeasuring 503 sq. yds. in the project "Parklands" for a total sale consideration of Rs.71,01,857/-, and on 25.06.2006, the complainant applied for the booking by making the payment of Rs.70,00,000/- through cheque bearing no. 991099 dated 25.06.2006.
- iii. That on 15.07.2006, respondents issued the allotment letter in favour of the complainant confirming the allotment of plot no. R-03, admeasuring 503 sq. yds. in the project "Parklands" situated in Faridabad for a total sale consideration of Rs. 71,01,857/-. It is pertinent to mention here that the respondents acknowledged the payment of Rs.70,00,000/- made by the complainant against the said plot in the said allotment letter.

- iv. Thereafter, the complainant kept on asking for the execution of the BBA and possession as well, however, the respondent BPTP Ltd. had scrapped or abandoned the said project i.e., the "Parklands". Thereafter, the complainant asked for the refund of the paid amount along with interest, but the respondent BPTP Ltd. showed its inability to refund the amount and gave an offer to the complainant that the respondent would adjust the amount paid by the complainant against plot no.R-03, admeasuring 503 sq. yds. in the project "Parklands" situated in Faridabad into some other projects of the respondents. It is pertinent to mention here that the complainant had no other option, therefore, under the compelling circumstances, the complainant decided to accept the offer of the respondents.
- v. That in 2008, the respondent allotted a commercial unit bearing no.014-1401 on the 14<sup>th</sup> floor situated in the "Centra One" project of the respondent which is situated at Sector-61, Gurugram in lieu of the earlier investment made by the complainant. It is pertinent to mention here that the total cost of the said unit is Rs.69,35,884/- and the complainant has already paid a sum of Rs.70,00,000/- therefore, not a single penny is left on part of the complainant to be paid.
- vi. That on 15.12.2008, the respondent sent two copies of BBA with respect to the unit allotted to the complainant i.e., unit no. 014-1401 for signing purposes and asked them to return the same after signing. It is pertinent to mention here that the complainant sent back both copies of the BBA after signing to the respondents. But, the respondent party has not provided the executed copy of the BBA to the complainant till date. That, the complainant is relying on the copy of BBA which she received for signing and due date of possession as per the possession clause viz. clause no. 2 of the said copy of BBA was 31<sup>st</sup> December 2011, however, the respondents have failed to deliver the unit of the complainant on or before the due date of possession after receiving more than 100% of total consideration.

- vii. That the respondent on 04.10.2011 sent a letter having the subject "Confirmation for the lease of your Unit No. O14-1401 in our project Centra One, Gurgaon, Haryana" to the complainant. That that the respondent asked in the said letter that whether the complainant wishes to lease out her unit i.e., unit no. OT-1401 or not.
- viii. That the complainant asked the respondents several times to provide a copy of the executed BBA, however, the respondents never paid any heed to the complainant and did not provide a copy of the executed BBA. Respondents sent a payment request letter on 01.11.2011 to the complainant with respect to her unit no. OT-1401 and shows a credit balance of Rs.5,90,542/- . It is germane to mention here that the complainant has already paid a sum of Rs.70,00,000/- viz. already more than 100% of the total consideration. It is further germane to mention here that the respondents made various irrelevant correspondence rather than sending requisite documents such as a copy of executed BBA, copy of OC, etc.
- ix. That on 02.06.2016, the respondents issued a statement of account in the name of the complainant, but the unit no. mentioned in the said statement of account does not belong to the complainant. It is relevant to mention here that a commercial unit no.014-1401 was allotted to the complainant and all correspondence was being made against the same, however, the said statement of account was issued against unit no.015-1501. That the respondents arbitrarily changed the unit of the complainant and never gave any intimation about the same to the complainant. In addition to this, the said statement of account issued by the respondents clearly shows that the total cost of the unit is Rs.68,60,193/-, the respondents called in total a sum of Rs.68,62,384/- and the complainant has made a payment of Rs.70,00,00/- . Furthermore, a credit balance of Rs.1,37,616/- is due on part to the builder, and the complainant has no dues to be paid.

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- x. That the complainant several times asked the respondents/builders to give justification for the change of unit, however, the respondents never provided any justification or reason to the complainant. That despite various telephonic conversations and personal visits made by the complainant, the respondent never even bothered to give a reasonable excuse for their misconduct, therefore, on 03.06.2016, the complainant sent a letter to the respondents and raised her grievances about the change of unit and execution of BBA. Furthermore, the complainant requested the respondents to make a refund of her investment.
- xi. That on 21.06.2016, the respondent again issued a statement of account, against unit no.015-1501 which also shows a credit balance of Rs.1,37,616/- due on the part of the respondents. The complainant again tried to connect with the respondents telephonically to raise her grievance about unit no., however, the respondents did not listen to the complainant and kept on sending further correspondence against unit no. 015-1501 instead of 014-1401.
- xii. Thereafter, on 22.08.2016, the respondents sent an email to the complainant and that too was against the unit no. 015-1501. It is relevant to note here that in the said email, the respondents have acknowledged the payment of Rs.70,00,000/- made by the complainant. And in the said email, the respondents have cooked-up a story about the execution of BBA that the complainant had collected the BBA from the office of the respondents and thereafter, she did not send back the copy of BBA with other requisite documents. That the respondents have made an effort cunningly to hide their own wrong and misconduct by cooking up a false and fake story. It is reiterated here that the complainant had sent the signed copies of BBA along with other requisite documents 8 years ago from the date of the said email so that BBA with respect to her unit can be executed. Moreover, it is obvious and self-understood that why would an allottee take such an action as mentioned by the

respondents in their email. That several emails/letters were exchanged inter-se the complainant and respondents pertaining to the grievances raised by the complainant.

- xiii. That the respondents sent a letter to the complainant in which the respondents confirmed the booking amount paid in respect to the unit of the complainant in project Centra One. It is crucial to note here that the said letter does not have any date and details of the unit against which the complainant paid a sum of Rs.70,00,000/-. That when the complainant over and over again enquired about the change of her unit, then the respondents confirmed that unit no. 014-1401 and 015-1501, both are the same units and it was just a typographic error, and 015-1501 is situated on the 14<sup>th</sup> floor same as unit no. 014-1401.
- xiv. That on 19.11.2018, after struggling and following up for 10 years, the respondent finally issued an offer of possession for unit no.015-1501. That the said offer of possession is nothing but a piece of paper loaded with unreasonable and illegal demands. The said letter contains several unreasonable demands under various heads i.e. "Electrification and STP Charges" of Rs.2,15,978/- enhanced external development charges of Rs.1,51,680/-, electrification and STP Charges of Rs. 2,15,978/-, GST and other charges such as fire fighting charges have been levied twice in Annexure-A of the said offer of possession under head "Fire Fighting Charges" of Rs.79,474/- and "Fire Fighting and Power backup Charges" of Rs.76,456/-etc. Moreover, the respondents increased the super area of the unit by 42 sq. ft. without any justification (The original super area was 964 sq. ft. and the revised super area is 1006 sq. ft.). That the offer of possession contains illegal and unjustifiable demands, therefore not tenable in the eyes of the law, moreover, the Respondents asked for the execution of indemnity cum undertaking from the complainant. It is germane to mention that the contents of the indemnity cum undertaking are arbitrary and one-sided favoring the respondents. It is highly

pertinent to mention here that the Respondents asked for the execution of indemnity deed cum undertakings, which are against the provision of law and contains arbitrary clauses.

- xv. That the complainant paid several visits to the project site and the sales office of the respondents with her family to enquire about the possession of her unit, and also, made several telephonic communications, however, office bearers of the respondent/builder kept on giving the lame excuses and never gave any satisfactory response. That despite several efforts made by the complainant, she never got any information with respect to the possession of her unit, hence all efforts went in vain.
- xvi. That on 10.01.2019, the respondents sent a reminder notice-I for the payment of the demand being raised by the respondents in respect to the illegal and unacceptable offer of possession issued by them in the name of the complainant. That the respondents party raised a demand of Rs.12,42,033/- in the said reminder notice which is not acceptable and reasonable demand, therefore, the same is not payable by the complainant.
- xvii. That on 12.05.2022, the complainant received an invoice from Worthy Maintenance Services Private Limited of Rs.11,52,213/-. The said invoice was sent on account of maintenance charges for the period starting from 01.04.2022 to 30.06.2022. That the respondents have not given valid possession to the complainant, therefore, the complainant is not liable to pay the maintenance charges for the mentioned period in the said invoice.
- xviii. That the complainant made several phone calls and visited several times to the office of the respondents, requested to give justification for the increase in the area & unjustifiable demands raised by them in their offer of possession of the original unit i.e. 014-1401 along with the Indemnity Bond cum undertaking. The complainant also requested to withdraw the unjustified demands but all

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went in vain, and till now the respondents have not offered the possession of the complainant's unit as per the law and the same is not valid.

- xix. That it has been 15 years since the booking of the complainant's unit in Centra One, and it is saddening that the complainant has no requisite document with respect to her unit bearing no.014-1401 such as BBA and valid offer of possession despite paying a huge amount of Rs.70,00,000/- that too in a single installment. Therefore, the complainant has made up her mind to withdraw from the project of the respondent in 2016 and get a refund of her investment if the respondents do not provide her unit/office bearing no.014-1401, in simple words, the complainant wishes to have the unit/office no.1401 on the 14<sup>th</sup> floor only which was allotted to her in the first place. Therefore, in 2023 the complainant sent an email to the respondents and asked them to provide her with all the requisite documents pertaining to her unit such as an application form, Allotment Letter, BBA, and Valid Offer of Possession, and many emails were exchanged between the complainant and the respondents for the same. That if unit bearing no.014-1401 and 015-1501 are the same (as per the words of the respondents) then in that state of affairs, the complainant expects from the respondents to give an affidavit stating that both the units i.e., unit/office bearing no.014-1401 and 015-1501 are the same and, in that case, the complainant would like to take possession of the unit/office no.014-1401 and delayed possession charges for the delayed period.
- xx. That the main grievance of the complainant in the present complaint is that despite the complainant has paid more than 100% of the actual cost of the flat and is ready and willing to pay the remaining amount (justified) (if any), the respondents party have failed to execute the BBA and deliver the possession of office/unit on promised time.
- xxi. That the cause of action for the present complaint arose in August 2008, when a unit/office in lieu of the adjustment of the investment of the complainant was

allotted to the complainant in the project Centra One. The cause of action further arose in December 2008, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the Allottee. The cause of action again arose in June 2016 when the respondents changed the unit of the complainant arbitrarily and the cause of action again arose on various occasions, including on August 2016, November 2018, January 2019, April 2021, May 2022, October 2023, and on many times till date, when the protests were lodged with the respondents party about its failure to deliver the project and asked for the refund of the paid amount along with interest and the assurances were given by it that the possession would be delivered by a certain time.

xxii. That as per section 11 (4) of the RERA Act, 2016, the promoter is under obligation towards allottees and as per section 12 of the RERA Act, 2016, the promoter is liable to return the entire investment along with interest to the allottees of an apartment, building, or project for giving any incorrect, false statement, etc. and as per section 18 of the RERA Act, 2016, the promoter is liable to pay the interest or return of the amount and to pay compensation to the allottees of a Unit, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale and as per section 19 (4) of the RERA Act, 2016, the promoter is entitled to a refund of the amount paid along with interest.

xxiii. That the present complaint is not for seeking compensation, without prejudice, complainant reserves the right to file a complaint to Adjudicating Officer for compensation.

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

4. The complainants have sought the relief as mentioned below:

I. Direct the respondents to refund Rs.70,00,000/- amount paid to the respondent, along with the interest at the prescribed rate, from the date of payment till the realization.

5. On the date of hearing, the Authority explained to the respondents /promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act.

**D. Reply by the respondents:**

6. The respondents have contested the complaint on the following grounds:

- i. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. At the outset, it is submitted that the name of the respondent no. 1 and 3 must be deleted from the array of parties as respondent no. 1 and 3 are not a party to the application form and the allotment letter. Moreover, no reliefs are sought by the complainant against respondent no.1 and 3. Hence, the name of respondent no. 1 and 3 shall be deleted from the array of parties.
- ii. That the complainant being interested in the residential plots of the respondent known under the name and style of "PARKLANDS" had applied for the purchase of the plot in the above-noted project of the respondent no.1. Pursuant thereof, a plot bearing no. R-03 admeasuring 503 sq. yds., was allotted to the complainant.
- iii. That after the allotment of the said plot in favour of the complainant, then she requested for the change in the project. That the *bonafide* of the respondent no.1 is pertinent to note at this stage that the respondent no.1, without any protest or demur accepted the said request of the complainant.
- iv. That thereafter, the funds of the complainant infused in the project "Parklands" was transferred to the new unit of the complainant. The complainant via application form in the project of respondent no.2, known under the name and style of "CENTRA ONE" (hereafter referred to as "project"). That pursuant

thereof, the complainant was allotted a tentative unit bearing no. 014-1401, 14<sup>th</sup> floor (*hereafter referred to as "unit"*).

- v. At this stage, it is imperative to note that as per the clauses of the application form, the unit of the complainant was tentative in nature and the final unit shall be determined after the receipt of the occupation certificate.
- vi. That it is imperative to note that prior to the purchase of the said unit in question, the complainant had conducted extensive research with respect to the project and only after being completely satisfied with regards to the development and construction status of the same, had willingly and voluntarily had made an independent decision for the purchase of the unit.
- vii. That thereafter, 2 copies of builder buyer agreement dated 15.12.2008 (*hereafter referred to as "Agreement"*) was collected by the complainant by hand on 11.12.2008 for the execution of the same but the respondent no.2 had, till date did not receive the signed copies of the agreement from the complainant.
- viii. That in the absence of any agreement executed between the parties, the relationships between the parties are thus governed by the application form and allotment letter executed between the parties. At the outset, it must be noted that the complainant willingly, consciously, and voluntarily applied for the purchase of the unit in the project of the respondent no.2. Hence, the complainant agreed to be bound by the terms and conditions of the application form and allotment Letter executed between the parties. Moreover, the amount payable to the respondent no.2 was agreed upon by the parties via the said application form and allotment letter and mutual understanding between the parties.
- xii. That the construction of the unit was hampered due to and was subject to the happening of the circumstances and other circumstances beyond the control of the company, the benefit of which is bound to be given to the respondent no.2. At this stage, it is categorical to note that the respondent no.2 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 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 complainants 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. They have been delineated hereinbelow:

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|----|---|
| 1. | <b>Date of Order:</b> 07.04.2015,<br><b>Period of Restriction:</b> 7th of April, 2015 to 6th of May, 2015 |
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	<p><b>Days affected:</b> 30 days</p> <p><b>Directions:</b> National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.</p> <p><b>Comments:</b> The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.</p>
<p>2.</p>	<p><b>Date of Order:</b> 19.07.2016 <b>Period of Restriction:</b> Till date the order in force and no relaxation has been given to this effect. <b>Days affected:</b> 30 days</p> <p><b>Directions:</b> National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.</p> <p><b>Comments:</b> The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.</p>
<p>3.</p>	<p><b>Date of Order:</b> 8<sup>th</sup> Nov, 2016 <b>Period of Restriction:</b> 8<sup>th</sup> Nov, 2016 to 15<sup>th</sup> Nov, 2016 <b>Days affected:</b> 7 days</p> <p><b>Directions:</b> National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.</p> <p><b>Comments:</b> The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.</p>

<p>4.</p>	<p><b>Date of Order:</b> 7<sup>th</sup> Nov, 2017  <b>Period of Restriction:</b> Till date the order has not been vacated  <b>Days affected:</b> 90 days</p> <p><b>Directions:</b> Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7<sup>th</sup> Nov 2017 till further notice.</p> <p><b>Comments:</b> The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21<sup>st</sup> Dec, 19 and 30<sup>th</sup> Jan, 20</p>
<p>5.</p>	<p><b>Date of Order:</b> 9<sup>th</sup> Nov, 2017 and 17<sup>th</sup> Nov, 2017  <b>Days affected:</b> 9 days</p> <p><b>Directions:</b> National Green Tribunal has passed the said order dated 9<sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17<sup>th</sup> of Nov, 2017). By virtue of the said order NGT had only permitted the competition of interior finishing/interior work of projects. The order dated 9<sup>th</sup> Nov, 17 was vacated vide order dated 17<sup>th</sup> Nov, 17.</p> <p><b>Comments:</b> On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period</p> <p style="text-align: center;"><b>Total days - 166 Days</b></p>

xiii. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days were consumed on account of circumstances beyond the power and control of the respondent no.2, 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.2 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.

- xiv. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent-builder. That it must also be noted that the respondent no.2 had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainants, however, despite all the hardships faced by the respondent no.2, the respondents did not suspend the construction and managed to keep the Project afloat through all the adversities.
- xv. Furthermore, it is categorical to note that the construction of the project was also subjected to timely payments of due instalments by the complainant. That it needs to be categorically noted 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 complainant, which, the complainant failed to do.
- xvi. That despite the occurrence of the *force majeure* circumstances the respondent no.2 has duly fulfilled its obligation in a timely manner and after completing the completion of the project, had applied for the occupancy certificate on 21.05.2018 and has attained the occupancy certificate on 09.10.2018, after which, the offer of possession was duly made to the complainant on 19.11.2018, i.e., before the expiry of due date of offer of possession. Moreover, after the completion of the project and duly receipt of the occupancy certificate the final unit allotted to the complainant was O15/1501 on 15<sup>th</sup> Floor, admeasuring 1006 sq. ft.
- xvii. That at this stage, it is pertinent to mention here that offer of possession dated 19.11.2018 provided to the complainant by the respondent no.2 was a valid



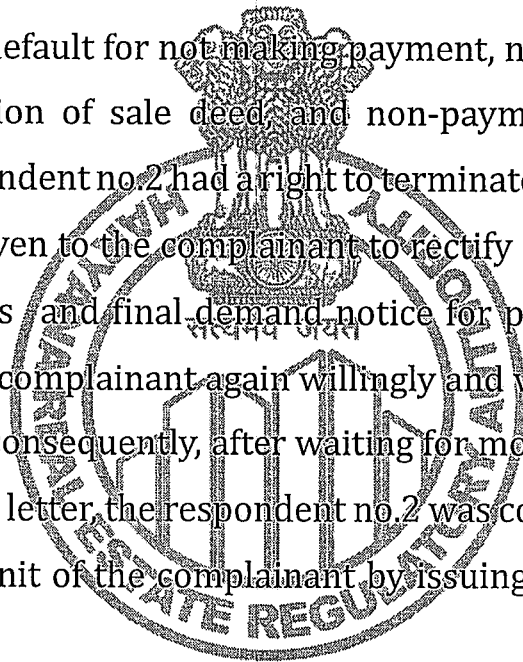
offer of possession as the same was issued after the receipt of the occupancy certificate.

- xix. It is imperative to note that the complainant delayed in remitting the due instalment on time due to which various demands and reminder letters were also issued in favour of the complainants. That the *bonafide* of the respondent no. 2 is imperative to note that even though the respondent no.2 was not under an obligation to remind the complainant regarding the due instalment, the respondent no.2 sent various demands and reminder letters in order to inform the complainant regarding the due instalments. The various demands and reminder letters issued by the respondent no. 2 are:

S. No.	Particulars	Date
1.	Payment Request Letter	12.05.2010
2.	Payment Request Letter	29.07.2011
3.	Payment Request Letter	01.08.2011
4.	Payment Request Letter	02.08.2011
5.	Payment Request Letter	01.11.2011
6.	Payment Request Letter	08.12.2011
7.	Payment Request Letter	07.07.2012
8.	Reminder Letter	10.01.2019
9.	Reminder Letter	14.02.2019
10.	Reminder Letter	21.05.2019
11.	Termination Letter	20.11.2023

- xxi. That the complainant failed to fulfil their obligations of payment of the instalments against the total sales consideration of the unit and hence, the complainant 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.

- xxii. At this stage, it is pertinent to note that all the demands raised by the respondent no.2 were as per the agreed terms and conditions of the application form and allotment letter executed between the parties.
- xxiii. That upon the non-payment by the complainant, the complainant was considered under default, and upon the failure of the complainant to rectify their default, the respondent no.2 was left with no other option but to terminate the unit of the complainant.
- xxiv. That, it is evident from the above-mentioned submissions that the complainant 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.2 had a right to terminate the unit. That multiple opportunities were given to the complainant to rectify their default through the reminder notices and final demand notice for payment of outstanding amount, however, the complainant again willingly and voluntarily chose to not rectify the same, and consequently, after waiting for more than five years from the offer of possession letter, the respondent no.2 was constrained to terminate the allotment of the unit of the complainant by issuing the termination letter dated 20.11.2023.
- xxv. That accordingly, after termination of the allotment of the unit of the complainant, the complainant was 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.2 is well within their right to forfeit the earnest amount along the delayed payment interest till the date of termination and other non-refundable amount including brokerage charges, processing fees, any monetary benefit given to the purchaser and the statutory dues paid against the unit.
- xxvi. That the right of the respondent no.2 to validly cancel/terminate the unit arises from the model RERA agreement which recognizes the default of the allottee



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and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.

xxviii. That after the termination of the agreement, no right or lien of the complainant exists in the said unit and the builder-buyer relationship between the parties came to an end. That after the said termination, there is no locus of the complainant to approach the Authority.

xxix. That 'no person should be granted the benefit of their own wrong' is a settled principle of law, and is squarely applicable in the present case, where the default of the complainant had led to the termination of the unit.

xxx. Hence, the termination has been validly made and now, the complainant has no right or lien over the unit and hence, the present complaint is bound to be dismissed.

xxxi. Hence, all the claims put forth by the complainant in the present complaint are wrong and frivolous. That in light of the *bona fide* conduct of the respondent no.2, no delay in the construction of the unit, the peaceful possession had already been offered to the complainant, non-existence of cause of action and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondents. Hence, the present complaint is liable to be dismissed.

7. All the averments made in the complaint were denied in toto.

8. Copies of all the 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.

#### **E. Jurisdiction of the authority**

9. The Authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### **E.I. Territorial jurisdiction**

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10. 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**

11. 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) The promoter shall-

(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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

12. 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 complainants at a later stage.

13. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020** decided on 12.05.2022 wherein it has been laid down as under:

*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to*

*refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondents:**

**F.I Objection regarding delay in completion of construction of project due to force majeure conditions.**

15. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the Hon'ble NGT and Environment Pollution (Prevention and Control Authority) prohibiting construction in and around Delhi and, but all the pleas advanced in this regard are devoid of merit.

16. An space buyer's agreement dated 15-12-2008 for unit no. 014-1401, 14<sup>th</sup> floor was issued by respondent to complainant and the same was signed by the complainant, but was not executed by the respondent. So, the document/receipt/provisional allotment letter/ draft agreement so issued in favour of person can be termed as an agreement for sale. Therefore, the due date of handing over of possession is taken from the clause of the draft agreement and the delivery date stipulated in the agreement is 31<sup>st</sup> December 2011. The events such as and various orders by NGT and Environment Pollution (Prevention and Control Authority) in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous

as there is a delay of more than five years and even happening after due date of handing over of possession. The respondent has received the occupation certificate/competition certificate of the commercial building from Ground floor to 14<sup>th</sup> floor, on 09.10.2018, which is seven years after the due date of possession i.e., 31.12.2011. Thus, the promoter-respondents cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

17. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 31.12.2011 and the respondents are claiming benefit of orders passed during the time period of 2015 to 2017 by the Hon'ble NGT and Environment Pollution (Prevention and Control Authority) prohibiting construction in and around Delhi whereas the due date of handing over of possession was much prior to these orders. Therefore, the Authority is of the view that orders passed by the Hon'ble NGT and Environment Pollution (Prevention and Control Authority) 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 complainants.**

G.I. Direct the respondents to refund Rs.70,00,000/- amount paid to the respondent, along with the interest at the prescribed rate, from the date of payment till the realization.

18. In the present complaint, the complainants intend to withdraw from the project and are seeking refund of the amount paid by them in respect of subject unit along with interest as provided under section 12. The relevant portion of Section 12 is reproduced hereunder:

***Section 12: Obligations of promoter regarding veracity of the advertisement or prospectus:***

*Where any person makes an advance or a deposit on the basis of the information contained in the notice advertisement or prospectus, or on the basis of any model apartment, plot, or building, as the case may be, and sustains*

*any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:*

*Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement, or prospectus, or the model apartment, plot, or building, as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.*

***"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. -***

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.***

***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.***

***(Emphasis supplied)***

19. Initially, complainant invested in the project Parklands, Faridabad and paid Rs.70,00,000/- vide cheque no. 991099 dated 25.06.2006 as per allotment letter dated 15.07.2006 in the said project and funds infused were later on transferred to Centra One, Sector-61, Gurugram and unit bearing no.014-1401 was allotted vide allotment letter dated 14.08.2008 (allotment date as mentioned by complainant and not objected by the respondent as recorded during proceedings dated 27.09.2024). Counsel for complainant further states that two copies of SBA partially signed at two pages by the complainant were sent to respondent but the same was never executed by the respondent. Complaint vide letter dated 03.06.2016 complainant had requested for refund and the reason for same was that the building had already depreciated by 5 years. The due date of possession is calculated as per

possession clause of the agreement is 31<sup>st</sup> December 2011. Further, vide offer of possession was made on 19.11.2018, where unit was changes from 014-1401 on fourteen floor area admeasuring 1000 sq. ft. to 015-1501 on fifteen floor area admeasuring 1006 sq. ft. and charges of PLC were demanded along with other charges. Counsel for respondent, states that the unit allotted is same, it's that 13<sup>th</sup> floor is missing i.e., the unit no. changes to 15<sup>th</sup> floor. However, it is on 14<sup>th</sup> floor only. As per submissions made by the parties and documents on record it is observed that at the time of offer of possession dated 19.11.2018 Preferential Location Charges (PLC) amounting to Rs.5,80,965/- was demanded by the respondents along with other charges. It is noted that if the unit is same then no PLC can be demanded at the stage of possession, demand of PLC by the respondent at this stage makes it clear that the unit is not same, and the demand is raised for changed new unit.

20. That the offer of possession dated 19.11.2018 made by the respondent was for different unit bearing no.015-1501 as the PLC charges were demanded which makes it clear that the location of the unit is changed at the stage of possession hence, the unit bearing no.015-1501 in offer of possession cannot be treated as same unit no.014-1401 which was allotted as alleged by the respondent in his submissions. It is pertinent to mention over here that even after a passage of more than 13 years the offer of possession of the allotted unit no.014-1401 has not been made to the allottee by the respondents/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to them and for which they have paid a considerable amount of money towards the sale consideration. Further, the Authority observes that unit was unilaterally changed from 014-1401 on fourteen floor area admeasuring 1000 sq. ft. to 015-1501 on fifteen floor on fifteen floor area admeasuring 1006 sq. ft. and charges of PLC amounting to Rs.5,80,965/- were demanded along with other charges. Document placed on



record ascertain that occupation certificate was received on 09.10.2018 is for ground floor to 14<sup>th</sup> floor. In view of the above-mentioned facts, the promoter is liable to return and entire investment along with interest to the allottees of an apartment, building, or project for giving any incorrect, false statement, etc. in view of the section 12 of the Act, 2016 due to change in unit and area the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016

21. The Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. observed as under:

*"25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

22. That the document placed on record ascertain that occupation certificate was received on 09.10.2018 is for ground floor to 14<sup>th</sup> floor. Complainant on 03.06.2016 requested the respondents for refund of amount paid along with interest vide letter dated 03.06.2016. The said refund request was made after five years from the due date of possession i.e., 31.12.2011, but before obtaining occupation certificate and before offer of possession made on 19.11.2018 for the changed unit bearing no. 015-1501 on 15<sup>th</sup> floor with PLC charges, which were not part of earlier allotment conditions.

23. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them along with interest

prescribed rate of interest as provided 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.

24. 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.
25. 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., 25.10.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit allotted in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to pay the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received in respect of the unit with interest at such rate as may be prescribed.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents are established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the

State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment (herein date of each payment is date on which funds were transferred for allotment in Centra One i.e., 14.08.2008) till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

**H. Directions of the authority**

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

i. The respondents are directed to refund the amount of Rs.70,00,000/- paid by the complainant along with prescribed rate of interest @11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment i.e., 14.08.2008 (date on which funds were transferred for allotment in Centra One) till the date of realization.

ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory  
Authority, Gurugram

Date:25.10.2024