

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

Complaint no.: 5566 of 2023
Date of filing of complaint: 11.12.2023
Date of first hearing: 20.03.2024
Date of decision: 08.01.2025

Ms. Divya Rajput

R/o: Sarkari Farm, Udham Singh Nagar, Post
Kelakhera, Gadarpur, Uttarakhand- 263152

Complainant

Versus

St. Patricks Realty Pvt. Ltd.

Registered address at 3rd Floor, Tower-D, Global
Business Park, MG Road, Gurugram, Haryana

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Anshul Yadav and Sh. Manoj Kumar (Advocates)

Complainant

Shri Venket Rao and Sh. Pankaj Chandola (Advocates)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of Section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provision of the Act or the rules and regulations made there under or to the allottee 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 complainant, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name and location of the project	Flamingo Floors in "Central Park Flower Valley", Sector-29, 30 and 32, village Dhundela and Berka, Tehsil Sohna, Gurugram
2.	Project area	10.925 acres
3.	Nature of the project	Residential Plotted Colony
4.	DTCP license no. and validity status	54 of 2014 dated 20.06.2014 valid up to 19.06.2024 28 of 2016 dated 23.12.2016 valid upto 22.12.2021
5.	Name of the Licensee	Chandi-Ram Pratap Singh and others
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 95 of 2017 dated 28.08.2017 Valid upto 31.01.2027
7.	Unit no.	G-156/FF, 1 st floor (as per BBA page 22 of complaint)
8.	Unit area admeasuring	1093 sq. ft. (super area) (as per BBA page 22 of complaint)
9.	Builder buyer agreement	07.04.2022 (page 20 of complaint)
10.	Possession Clause	7.1 Schedule for possession of the said Unit <i>"The Company and Allottee(s) agree and understand that timely payment of installments by the Allottee(s) as per Payment Plan and timely delivery of possession of the Unit alongwith parking (if applicable) to the Allottee(s) are the essence of the Agreement. The Company assures to hand over possession of the Unit alongwith parking (if applicable) as per agreed terms and conditions on or before 30-Jan-2023, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is</i>



delay due to "force majeure", Court orders, Government policy/ guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said Project for any reason other than the noncompliance by the Company, non availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes affecting the regular development of the real estate project. If, however, the completion of the Project is delayed due to the above conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the Unit. The Allottee(s) agrees and confirms that, in the event it becomes impossible for the Company to implement the project due to "force majeure and above mentioned conditions, then this allotment shall stand terminated and the Company shall refund to the Allottee(s) the entire amount received by the Company from the Allottee(s) within ninety days. The Company shall intimate the Allottee(s) about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee(s), the Allottee(s) agrees that he/ she shall not have any rights, claims etc. against the Company and that the Company shall be released and discharged from all its obligations and liabilities under this Agreement."

(Emphasis supplied)

11.	Due date of possession	30.01.2023 (As per clause 7.1 of the BBA) *Inadvertently recorded as "(As per BBA + 6 months grace in lieu of HARERA notification no. 9/3-2020 dated 26.05.2020 for Covid-19)" in proceedings of the day dated 30.10.2024.
12.	Basic Sale price	Rs.76,19,759/- (page 23 of complaint)
13.	Amount paid by complainant	Rs.11,96,063/- (page 73 of reply)
14.	Final reminder letter sent by respondent asking the complainant to make payment of Rs.56,80,731/-	01.10.2022 (page 31 of reply)



15.	Notice for cancellation of unit	11.11.2022 (page 68 of complaint)
16.	Complainant approached bank for re-validation of bank loan	21.12.2022
17.	Forfeiture letter sent by respondent	18.01.2023 (page 69 of complaint)
18.	Amount of Rs. 9,02,875/- refunded by respondent to complainant after deduction of Rs.1,08,339/- towards govt taxes and Rs.1,84,849/- towards brokerage, aggregating to Rs.2,93,188/-	17.01.2023 by way of cheque
19.	Legal notice sent by complainant to respondent	15.02.2023 (page 73 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- a) That the complainant after seeing advertisements of the respondent herein, soliciting sale of its residential units to be located at Sector-29, 30 and 32, Gurgaon, Haryana, forming part of a low cost/affordable housing project of residential flats namely "Flamingo Floors" came into contact with the executives of the respondent, who embarked upon the complainant with their sales team with various promises of timely completion of project and swift delivery of possession on time.
- b) That the complainant paid a sum of Rs. 7,50,000/- as demanded by the respondent on 14.03.2018 and booked unit no. G-156/FF, tower-G in the name of the complainant.
- c) That the complainant requested again and again to respondent for execution of builder buyer agreement, but the respondent did not pay any heed to the said request of the complainant as the booking amount has already been paid by the complainant. The respondent time and again just promised via emails and verbally that the agreement to sale shall soon be executed and registered but never made any real efforts to get the same executed.

- d) That in January 2022 the respondent again asked for payment and promised to get the agreement for sale executed soon. The complainant believing in the promises of the respondent made the said payment.
- e) Thereafter, in the month of April 2022 the respondent got the agreement for sale executed and registered in favour of the complainant. However, the respondent had taken more than 10% of the cost of the unit as advance payment before even executing the said agreement for sale dated 07.04.2022.
- f) That as per the payment schedule the complainant was to provide 75% of payment through bank subvention. Pursuant to the said execution of agreement for sale the complainant applied for loan with its bank "Canara Bank". The bank, after sanctioning the said loan in month of June 2022, approached the builder to fulfil the compliance in accordance with the loan tripartite agreement but the builder failed to do so. Due to lack of approach from the builder the said loan amount could not be disbursed.
- g) That the builder never supplied the original copy of the said allotment letter or agreement to sale to the complainant and represented to the complainant that the said original agreement to sale is to be submitted by the respondent to the bank while signing the tripartite loan agreement.
- h) That the respondent failed to submit the demand to the bank for release of the said loan amount after June 2022. Further due to the failure of the respondent to submit the original allotment letter, agreement to sale and other documents to the bank the said loan could not be disbursed in June 2022. The said fact was completely unknown to the complainant as she was assured by officials of the respondent that the compliances regarding the loan agreement shall be timely complied by the respondent with the bank.
- i) That the builder arbitrarily issued a notice for cancellation dated 11.11.2022 to the complainant informing that the allotment of said unit has been cancelled and the agreement to sale has been revoked on account of failure of the complainant to pay the outstanding dues.



- j) That the complainant on the receipt of the said email contacted the officials of the respondent. The complainant requested the respondent to take back the cancellation notice since the complainant was always ready to make the payment in accordance with the loan agreement but due to some miscommunication by the respondent the same could not be processed.
- k) That on the promises made by the officials of the respondent that if the loan is re-sanctioned the said notice of cancellation shall be revoked and withdrawn, the complainant approached her bank for revalidation of the said loan and got the approval on 21.12.2022. However, the complainant since December 2022 has made several visits to the office of the respondent but the respondent has denied accepting the outstanding payment and to handover the possession of the said unit.
- l) That the said cancellation notice has been sent by respondent with malafide intent to cheat complainant and to usurp the said unit of complainant by using illegal means and methods. As such, complainant is legally entitled to take physical possession of the said unit in terms of the agreement to sell dated 07.04.2022 by way of restoration as per law.
- m) That the cause of action for filing present complaint first arose when the respondent issued notice of cancellation and further arose when the respondent failed to procure the occupancy certificate of the said unit within time and the cause of action is continuing and subsisting one as the respondent has failed to handover the possession of the said unit.

C. Relief sought by the complainants:

4. The complainant has sought the following relief(s):

- I. Direct the respondent to restore allotment of the complainant and handover the possession after payment of outstanding dues.
- II. Direct the respondent to pay interest for every month of delay at prevailing rate of interest till the time of valid offer of possession is made by the builder after receiving of OC.
- III. Direct the respondent to pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the complainant.

- IV. Direct the respondent to pay a sum of Rs. 5,00,000/- for harassment and mental agony suffered by the complainant.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to Section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent has contested the complaint by filing reply on the following grounds: -
- a) That complainant booked a residential unit vide application no. CP-3/IF/658 dated 28.02.2018 in the project "Flamingo Floors" in Central Park Flower valley being developed by the respondent in Sector 29, 30 and 32 situated at village Dhundela and Berka, Tehsil Sohna, District Gurugram, Haryana by paying a sum of Rs. 7,50,000/- vide cheque no. 000011 dated 12.02.2018 drawn on the Bank of Baroda in favour of the respondent against which the acknowledgement was issued vide receipt no. BRV/17-18/03455 dated 31.03.2018. The complainant was allotted a unit bearing no. G-156/FF, having carpet area of 638 sq. ft. and super area of 1093 sq. ft in the said project for a total consideration of Rs. 79,73,759/-.
- b) That after booking and allotment of the unit in question, the respondent approached the complainant time and again and requested her to visit the office of the respondent to execute the agreement to sale, however, the complainant deliberately delayed the same. On 13.11.2021 the respondent sent a reminder to the complainant and called upon her to execute the agreement. However, the complainant did not turn up to sign the agreement.
- c) That the complainant vide email dated 16.11.2021 assured the respondent that she will visit to sign the agreement in the first week of December. In response, the respondent vide email dated 18.11.2021 requested the complainant to visit for the same. Despite assurance of signing the agreement in the first week of December, the complainant failed to turn up. The respondent was constrained to issue another reminder letter dated 06.12.2021 to the complainant for

execution of the agreement which was ignored by the complainant and the execution of the agreement was further delayed.

- d) That the respondent received email from the complainant on 13.01.2022 stating that she could not travel to the office of the respondent due to covid restrictions and requested for some more time for execution of the agreement. The complainant again vide email dated 17.01.2022, requested the respondent to extend the time for execution of the agreement.
- e) That considering the pandemic situation, the respondent vide email dated 19.01.2022 offered to assist the complainant through video conferencing, conference call or through SPA to present the agreement to sell in the tehsil before the Tehsildar. However, no response was received from the complainant on the above email.
- f) That the respondent again received a mail dated 20.01.2022 from the complainant stating that she is hospitalized and thus, would not be able to visit to the office of the respondent and assured that she will visit around 27th or 28th of January 2022. Thus, the execution of the registration was delayed due to non-availability of the complainant and after many reminders and requests the agreement could be signed and registered in April 2022.
- g) That after much pursuance, on 07.04.2022, an agreement to sale was executed for the said unit having basic sale price of Rs. 67,13,760/- plus all other charges mentioned and agreed by the complainant under the agreement to sale and total sale consideration for the unit in question added up becomes Rs. 79,19,759/- which is also evident from Annexure A-2 of the said agreement.
- h) That as per clause 7.1 of the agreement, the respondent was under obligation to handover possession of the unit on or before 30.01.2023, however, the same was subject to timely payment of sale consideration of the said unit as per the payment plan opted by the complainant. Since the complainant in the present matter is a chronic defaulter and has miserably failed to make timely payments

despite multiple reminders, therefore, committed date was entitled to be extended automatically.

- i) Further, in terms of clause 5 under the said agreement, it was agreed between the parties that the time is essence of the agreement and therefore, both the parties are strictly required to adhere the timelines agreed and committed under the agreement. It was agreed by the complainant that she will adhere to the timelines as agreed under the payment schedule and shall make timely payment which directly impacts the timely execution of the project.
- j) That as per the provisions of the Real Estate (Regulation and Development) Act, 2016 specifically Section 19(6), the complainant was under an obligation to make timely payments as per the agreement. However, the complainant has violated the provisions of the RERA Act as well as the agreed terms and conditions of the agreement. The complainant had time and again failed to make the payment as per agreed payment schedule due to which the respondent was constrained to issue various reminders and upon not receiving the payment even after the reminder, the respondent was constrained to terminate the allotment of the unit in question.
- k) That as per clause 2 of the agreement, it was agreed between the parties and consented by the complainant that the respondent shall not be liable to issue any demand or reminders with respect to the payment and the complainant shall make the payment towards the said demand before the due date of possession as agreed under the agreement.
- l) That the complainant had opted Subvention payment plan at the time of submitting application for allotment of unit on 28.02.2018 and since then the complainant delayed the execution and registration of agreement for sale on one pretext or the other and blocked the unit from 14.03.2018 till 11.11.2022 and not bothered to make payments even after 56 months from the date of booking. Notwithstanding the aforesaid, it is pertinent to mention here that the complainant failed to get her loan sanctioned on time due to her own act,



conduct, acquiescence and latches. The unit was cancelled on 11.11.2022 and the loan of the complainant was sanctioned from Canara Bank on 21.12.2022 i.e. post cancellation of unit. Thus, the complainant herself had breached the terms and conditions of agreement for sale and failed to get the loan sanctioned on time and clear her outstanding dues as per the agreed payment plan.

- m) That the respondent, after the execution of the agreement, had sent various intimation of payment in terms of the payment schedule demanding an amount of Rs. 56,80,731/- against the total sale consideration which consist 65% of the total sale consideration. However, the complainant failed to make the timely payment as per the agreed payment plan agreed under the agreement for sale and thus breached the terms and conditions of the agreement. The complainant had paid an amount of Rs. 11,96,064/- only against the total sale consideration of Rs. 79,73,759/-.
- n) That the respondent upon not receiving any response from the complainant and waiting for a long period for payment in good faith, had issued a last and final opportunity letter dated 01.10.2022 for payment of outstanding dues of Rs. 56,80,731/- and requested the complainant to make the entire payment within 5 days from the said letter failing which the respondent would be constrained to cancel the unit. However, despite the said last and final opportunity letter, the complainant chose not to make the payment towards outstanding dues. Further, in terms of clause 9.3 of the agreement and Section 11 of the Act of 2016 the promoter may cancel the allotment of the unit in terms of the agreement.
- o) Further, vide letter dated 18.01.2023 titled as "Forfeiture upon Cancellation of Allotment" the respondent refunded an amount of Rs. 9,02,875/- to the complainant through cheque bearing No. 411805 dated 17.01.2023 drawn on IndusInd Bank after deducting only an amount of Rs. 1,08,339/- towards the government taxes paid/recovered and Rs. 1,84,849/- towards brokerage/incentive or scheme both aggregating to Rs. 2,93,188/-.

- p) That the respondent could deduct 10% of the total sale consideration plus the statutory charges paid to the government departments, however, with good will and to secure the interest of the complainant, the respondent deducted only a nominal amount of Rs. 2,93,188/- against cancellation.
- q) That the complainant further sent a legal notice dated 15.02.2023 to the respondent for withdrawal of the cancellation and the cheque of refundable amount. Further, the cancellation of the unit had already occurred on 11.11.2022, however, the complainant got her loan sanctioned on 21.12.2022 which clearly replicates that the complainant had no valid means to pay and she was deliberately ignoring all the demand and reminders of the respondent and breached the terms of the agreement.

7. All other averments made by the complainant were denied in toto.
8. 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 those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority:

9. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for reasons given below.

E. I Territorial jurisdiction

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 the entire Gurugram District for all purposes 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 the 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 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;

Section 34-Functions of the Authority:

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

12. So, given 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 relief sought by the complainant.

F.I Direct the respondent to restore allotment of the complainant and handover the possession after payment of outstanding dues.

F.II Direct the respondent to pay interest for every month of delay at prevailing rate of interest till the time of valid offer of possession is made by the builder after receiving of OC.

13. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. The factual matrix of the case reveals that the complainant was allotted a unit no. G-156, 1st floor in the respondent's project “Central Park Flower Valley” at the basic sale consideration of Rs. 76,19,759/- in 2018. Thereafter, a buyer's agreement was executed between the parties on 07.04.2022. The possession of the unit was to be offered on or before 30.01.2023 in terms of clause 7.1 of the said agreement. Accordingly, the due date of offer of possession comes out to be 30.01.2023. The complainant paid an amount of Rs.11,96,063/- against the



basic sale consideration of Rs.76,19,759/-. On 01.10.2022, the respondent sent a final reminder letter to the complainant requesting to clear the outstanding dues and on failure of the complainant to clear the said outstanding dues, the respondent cancelled the unit allotted to the complainant vide cancellation letter dated 11.11.2022. Subsequently, a forfeiture letter dated 18.01.2023 was also sent to the complainant, refunding an amount of Rs.9,02,875/- by way of cheque and forfeiting only an amount of Rs.2,93,188/- towards government taxes and brokerage.

15. Further, the counsel for the complainant submitted that the allotment was made in 2018, however, the buyer's agreement was not executed until 07.04.2022. She further claimed that delay in execution of the agreement was solely due to the fault of the respondent. On the other hand, the respondent contended that the complainant had intentionally delayed the execution of the agreement and same is evident from various reminders and e-mails sent by the respondent dated 13.11.2021, 18.11.2021, 06.12.2021, 17.01.2022 and 19.01.2022. The Authority after careful consideration of all the documents placed on record is of the view that the complainant had not placed on record any document to substantiate the fact that delay is on part of the respondent in executing the buyer's agreement. Further, the respondent though placed on record certain reminders and e-mails sent by it to the complainant, but no such reminder or e-mail is placed on record which dates back between the years 2018 to 2020. Furthermore, the reminder for executing the buyer's agreement in 2021 was sent only in November, long after the initial allotment. Therefore, the Authority concludes that both the complainant and the respondent sufficiently contributed towards the said delay in execution the buyer's agreement. Now, the foremost question that arises is whether the cancellation letter dated 11.11.2022 is valid or not?

16. The respondent stated that as per clause 2 of the agreement, the respondent was not liable to issue any demand or reminders to the complainant with

respect to the payment. However, careful perusal of clause 2 of the said agreement reveals that there is ambiguity in language of clause 2 of the agreement as initially it is stated that the complainant shall make payments after the written demand by the respondent and in the same paragraph it is mentioned that the respondent is not liable to issue any demand letters asking the complainant for making the payment of outstanding dues. Entire clause 2 of the buyer's agreement dated 07.04.2022 is reiterated below:

*"2. Subject to the terms of this Agreement and the Company abiding by the construction/ development milestones, **the Allottee(s) shall make all payments, on written demand by the Company**, within the stipulated time as mentioned in the Payment Plan through A/c Payee cheque/demand draft/bankers' cheque or online payment (as applicable) in favour of "St. Patricks Realty Private Limited" payable at Gurugram. If the cheque given by the Allottee(s) is dishonoured by the drawee bank for any reason whatsoever it shall amount to non-performance of his/her obligations and material breach of the terms and conditions of the Agreement and the Company shall have the right to cancel the allotment of the Unit to the Allottee(s) on account of default in payment of Sale Price. The Allottee(s) agrees that the payments on due date/milestones as set out in Payment Plan shall be made on or before the due date and **the Company is not liable to send any notice or demand with respect to such payment. However, the company shall intimate the Allottee(s) about achieving of milestones as set out in Payment Plan to keep the Allottee(s) updated.**"*

17. Further, the respondent issued a cancellation letter dated 11.11.2022 in favour of the complainant, which reads as under:

*"..... **Despite of our demand for payment of balance due instalments followed by the letter giving you the last and final opportunity to pay the due and outstanding amount to avoid cancellation of allotment of Unit, we have not received due amount towards your outstanding against the unit. You are aware that you have not complied with any of your commitments of payment plan as per Agreement to sale dated 07-Apr-22 thereby restraining the process of timely development of the Project by the company.....**"*

Though the respondent stated that he had issued demand and reminder letters to the complainant before issuance of final reminder letter, only a final reminder letter dated 01.10.2022 asking the complainant to make payment of Rs.56,80,731/- had been placed on record. Thus, the language of cancellation letter dated 11.11.2022 read in consonance with clause 2 of the buyer's agreement clarifies that the respondent was duty bound to issue demand letter asking for payment of outstanding dues.

18. Further, the complainant stated that as per the payment schedule the complainant was to provide 75% of payment through bank subvention. The same is reiterated as under:

Subvention Payment Plan			
Installment No.	Time when Due	Details of Payment	Amount (in Rs.)
1.	At the time of booking	10% of Cost of Unit	7,97,376/-
2.	On Allotment/Agreement	5% of Cost of Unit	3,98,688/-
3.	Bank Subvention	75% of Cost of Unit	59,80,319/-
4.	On Offer of Possession	10% of Cost of Unit	7,97,376/-
Total Cost of the Unit			79,73,759/-
*In addition to the Total Amount, Stamp Duty, Registration charges and any other charges as per the terms of the agreement are also payable on "Offer of Possession"			

The complainant further submitted that she applied for loan with the "Canara Bank" and it was only due to the failure of the respondent to submit the original allotment letter, buyer's agreement and other documents to the bank the said loan could not be disbursed in June 2022. However, nothing is placed on record by the complainant to substantiate the same.

The Authority is of the view that Annexure 3 of the buyer's agreement provides for payment plan under subvention scheme, but it nowhere specifies the time period within which the complainant has to apply for the bank subvention scheme.

19. Further, the said project of the respondent was registered on 28.08.2017, i.e., after coming into force of the Haryana RERA Rules, 2017 which provides for draft Model RERA agreement. Clause 9.3 of the Model RERA Agreement provides for a procedure for cancellation of allotment of the allottee. The relevant part of the clause is reproduced below: -

"9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

- (i) In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount at the rate prescribed in the Rules;*
- (ii) In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Plot/Unit/Apartment for* ✓



Residential/ Commercial/Industrial/IT/any other usage along with parking (if applicable) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination."

20. Herein, buyer's agreement was executed between the parties on 07.04.2022, however, the said agreement is not in terms of the Model RERA agreement. The same is evident from the cancellation clause of the agreement. The relevant part of the clause is reproduced below: -

"9.3 In case of default by the Allottee(s) in performance of its obligations as mentioned in this Agreement and/or if the Allottee(s) fails to make payments of instalments as per Payment Plan and other lawful charges, the Company shall be entitled to cancel the allotment of the Unit and forfeit the booking amount paid for the allotment, interest component on delayed payment (payable by Allottee(s) for breach of agreement and non-payment of any due payable to the Company) and other charges including holding charges, maintenance charges, brokerage, cost of any incentive or scheme given and any other amount of a non-refundable nature and the balance amount of money paid by the Allottee(s) shall be refunded by the Company to the Allottee(s) within ninety days of such cancellation. On such default, the Agreement and any liability of the Company arising out of the same shall thereupon, stand terminated. The right of the Company to cancel the allotment of the Unit as mentioned in this clause is in addition of the rights of the Company for cancellation of the allotment as mentioned in other clauses. After cancellation of the allotment of the Unit under this clause or any other clause as mentioned in this Agreement, if the Allottee(s) wants to purchase the Unit it shall be done by new agreement under fresh terms and conditions of such new agreement and on a price prevailing at that time."

21. As per the said clause 9.3 of the agreement, there is no pre-requisite of sending the demand letters to the complainant before cancelling the allotment. However, Model RERA Agreement provides that only after the complainant fails to make the payment of two consecutive demands as per the payment plan for a period beyond 90 days, the respondent may cancel the unit allotted to the complainant that too after an intimation in this regard to the complainant.

Further, only after the expiry of 30 days of such intimation, cancellation can be affected.

22. Therefore, the said cancellation, not being in terms with the payment plan and the Model RERA Agreement is invalid and hereby quashed. Thus, the Authority is of the view that the respondent is obligated to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. The rationale behind the same is that the allottee purchased the subject unit way back in 2010 and paid the demanded amount in hope to get possession of the allotted unit.

23. Herein, the complainant intends to continue with the project and is seeking delay possession charges as provided under Proviso to Section 18(1) of the Act. Section 18(1) Proviso reads as under.

"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."

24. **Due date of possession:** Clause 7.1 of the buyer's agreement provides for due date of possession, i.e., 30.01.2023. Same is reiterated as under :

7.1 Schedule for possession of the said Unit

"The Company and Allottee(s) agree and understand that timely payment of installments by the Allottee(s) as per Payment Plan and timely delivery of possession of the Unit alongwith parking (if applicable) to the Allottee(s) are the essence of the



Agreement. The Company assures to hand over possession of the Unit alongwith parking (if applicable) as per agreed terms and conditions on or before 30-Jan-2023, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure", Court orders, Government policy/ guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said Project for any reason other than the noncompliance by the Company, non-availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes affecting the regular development of the real estate project....."

25. Admissibility of delay possession charges at prescribed rate of interest: -

The complainant are seeking delay possession charges however, 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, *ibid*. 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.

26. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

27. 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., 08.01.2025 is @ 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

✓



28. 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;"*

29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

30. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 30.01.2023. Occupation certificate has also not been obtained by the respondent from the concerned authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of possession, i.e., from 30.01.2023 till the expiry of 2 months from the date of valid offer of possession or till the date of actual handing over of possession, whichever is earlier.

F.III Direct the respondent to pay a sum of Rs.30,000/- as cost of litigation/present proceedings to the complainant.

F.IV Direct the respondent to pay a sum of Rs. 5,00,000/- for harassment and mental agony suffered by the complainant.

31. The complainants are seeking the above-mentioned reliefs w.r.t. compensation.

The Hon'ble Supreme Court of India in *Civil Appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.* has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

H. Directions of the Authority:

32. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.

I. Cancellation letter dated 11.11.2022 is set aside. The respondent is directed to reinstate the allotment of the complainant. Furthermore, in case third-party rights have been established with respect to the said unit, the respondent is directed to allot an alternative unit of equivalent dimensions within the same project and at the original price agreed with the complainant followed by execution of builder buyer agreement between the parties. Further, the possession of the unit shall be handed over to the complainant after obtaining of occupation certificate/CC/part CC from the competent authority as per obligations under Section 11(4) (b) read with Section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.

II. The respondent is directed to pay delay possession charges to the complainant against the paid-up amount at the prescribed rate i.e., 11.10%



per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 30.01.2023 till expiry of 2 months from the date of offer of possession or actual handover, whichever is earlier as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the Rules, ibid.

III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

IV. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

33. The complaint stands disposed of.

34. File be consigned to the registry.

Dated: 08.01.2025

HARERA
GURUGRAM

Ashok Sangwan
(Member)
Haryana Real Estate
Regulatory Authority,
Gurugram