

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

Complaint no. :	1324 of 2024
Date of filling of complaint:	09.04.2024
First date of hearing:	19.07.2024
Date of decision:	22.11.2024

Sunil LambaAddress: - 310, Lamba Koti, Alakhpura, Siwana,
PO: Siwaa, District-Bhiwani, Haryana-127041**Complainant**

Versus

1. BPTP Limited**2. M/s Countrywide Promoters Pvt. Ltd.**Address: - M-11, Middle Circle, Connaught Circus, New
Delhi-110001**Respondents****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Shri Dinesh Kumar (Advocate)

Shri Harshit Batra (Advocate)

Complainant
Respondents**ORDER**

1. The present complaint dated 09.04.2024 has been filed by the complainant 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 under the provision of the Act or the rules and regulations

made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

2. The particulars of the project, the details of 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	"BPTP Amstoria", Sector-102 A, Gurugram, Haryana
2.	Nature of the project	Residential Plotted Colony
3.	Project Area	108.068 acres
4.	RERA Registered/ not registered	Un-registered
5.	License no. and validity	58 of 2010 dated 03.08.2010, Renewed on 02.12.2020 valid till 02.08.2025. [As per data available at DTCP website]
	Licensee name	Countrywide Promoters Pvt. Ltd. & Others
6.	Unit no.	A-140, Ground floor [as per BBA at page 70 of reply]
7.	Tentatively unit area admeasuring	1999 sq. ft. (super area)
8.	Date of booking-	02.06.2011 [as per application for provisional allotment at page 47 of reply]
9.	Date of allotment	05.08.2011 [as per allotment letter at page 59 of reply]
10.	Date of Floor Buyer's Agreement between BPTP,	15.03.2012 [as per BBA at page 64 of reply]

	complainant and Countrywide Promoters	
11.	Possession clause	<p>5. Possession</p> <p>5.1 "... the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanction of building plans or date of execution of Floor Buyer's Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under Act in respect of the entire colony."</p> <p style="text-align: right;">(Emphasis Supplied) [as per BBA at page 74 of reply]</p>
12.	Due date of possession	<p>15.09.2014</p> <p>(Calculated from date of execution of buyer's agreement i.e., 15.03.2012 due to date of sanction of building plan is not on record.</p> <ul style="list-style-type: none"> • Grace period included
13.	Basic Sale Consideration	<p>Rs.91,60,998/-</p> <p>(excluding development charges, PLC, club membership charges, IFMS, electrification charges, power backup, water connection, electricity connection charges, electricity supply line charges, etc.)</p> <p>[Page 70 of reply]</p>
	Total sale consideration	Rs.97,09,107

		As per SOA dated 14.05.2013 on page 83 of the complaint
14.	Amount paid by the complainant	Rs.82,86,797/- [As per SOA dated 14.05.2013 on page 83 of the complaint]
15.	Occupation certificate	Not obtained
16.	Notice of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That having trust upon the respondents, the complainant booked a residential Unit No. A-140, Ground Floor, tentatively admeasuring area 1999 Sq. Ft. in residential plotted colony named "Amstoria" at Village-Kherki Majra and Dhankot, Sector-102, 102A, Tehsil & District-Gurugram being developed by M/s BPTP Limited and M/s Countrywide Promoters Private Limited and initially paid an amount of Rs. 9,00,000/- as initial sale consideration under the receipt no. 2011/1400005867 dated 03.06.2011 towards the aforesaid flat.
 - That the aforesaid floor was booked by the complainant under the Construction Linked Plan (CLP) as given by the respondents. It is relevant to mention herein that the respondent no. 1 received a sum of Rs.9,00,000/- on 03.06.2011 Rs.9,04,203/- on 02.09.2011, Rs.11,44,324/- on 02.11.2011 in respect of the aforesaid floor from the complainant prior execution of the floor buyer agreement. It is relevant to mentioned herein that the complainant had to avail the loan facility from the Punjab National Bank to pay the instalments of

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- the aforesaid floor. That the respondents jointly signed/executed a floor buyer's agreement dated 15.03.2012 with the complainant.
- c. That after receiving the signed copy of the floor buyer's agreement on 15.03.2012, complainant shocked to see the terms and conditions of the said agreement, because all the terms and conditions of the said agreement were completely one sided and discriminatory, however there was no option to the complainant at that time, since the huge amount had already been paid by the complainant to the respondents prior to the execution of the floor buyer agreement dated 15.03.2012, consequently, the complainant did not raise his voice against the discriminatory terms and conditions of the agreement.
- d. That the respondents collected a sum of Rs. 82,86,797.78/- from the complainant against the net total cost of the unit i.e., Rs.97,09,107/- by 14.05.2013. In this regard, a statement of account was given by the respondents to the complainant on 14.05.2013. Thereafter, even the respondents also received the VAT charges of Rs.83,161.15/- from the complainant on 12.01.2018, in this way, the respondent had received the total sum of Rs.83,69,959/- from the complainant till 2018. It is apparent from the statement of account that the respondent builder had collected more than 90% amount from the complainant till May, 2013.
- e. That in clause no. 5.1 of the floor buyer's agreement, the respondents had promised/assured that the physical possession of the floor shall be handed over to the complainant within a period of 24 month from the date of sanctioning of the building plan or execution of floor buyer agreement whichever is later.

- f. That in clause no.6 of the floor buyer agreement dated 15.03.2012, both the respondents had jointly promised with the complainant to pay compensation in case of delay in handing over the possession of the said floor. The grievance of the complainant is that respondents have completed the structural works of the aforesaid floor since long time back on the designated plot no. A-140 in the aforesaid project in accordance with the layout-cum-demarcation plan sanctioned by the town & country planning Haryana, however the respondents are not completing the plaster and other finishing work in the aforesaid floor knowingly and intentionally since last about 5 years and pressurizing the complainant to take his money back with interest and not to claim possession of the booked floor. In fact, the respondents want to earn more profit by selling the floor of the complainant to any other person/buyer on the higher price, since the value of the complainant's floor has been increased now as per the present real estate market scenario.
- g. That it is on record, the complainant had booked the aforesaid floor in the 2011 and the floor buyer agreement was executed by the respondent jointly with the complainant on 15.03.2012 and in terms thereof, the physical possession of the floor was to be handed by the respondents within a period of 24 months from the date of execution floor buyer agreement, however the respondents left the unit of the complainant abandoned after completing the structural work only. The complainant has been waiting for his dream house since last more than 10 years, however now the respondents are still reluctant not to complete the finishing work and handing over the physical possession of the same to the complainant and creating pressure

upon the complainant to withdraw from the project and take his money back with interest purposely so that they could earn more profit by selling the unit of the complainant to any other person/buyer on higher price. In fact, the respondents are involved in mal-practice and playing with the innocent allottees like complainant.

- h. That the malpractice of the respondents clearly reflects from these facts that the respondents have already completed and handed over the physical possession of the floors on the adjacent plots no. 143, 144, 145, 146, 147, 148 etc (having same boundary wall) etc. in the back lane and same block of the aforesaid project, however the respondents are not completing the finishing work of the complainant's floor no. A-140 which is also located in the same lane/block of the aforesaid project.
- i. That on 03.08.2020, the complainant's son Digvijay Lamba sent an email on behalf of his father to the respondents requesting to deliver the unit no. A-140 GF alongwith compensation as per the buyer's agreement dated 15.03.2012 and also requested to pay the compensation amounting to Rs.38,98,050/- in accordance with the terms and conditions of the buyer's agreement for delay in handing over the possession of the unit, even the relevant page of the buyer's agreement dated 15.03.2012 had also been attached by the complainant's son in the said email, however the respondents did not make any response till date.
- j. That the complainant has visited number of times in the office of respondents and lastly on 20.03.2024 and submitted his grievance to the respondents and requested accordingly to complete the remaining work of his floor and hand over the physical possession of

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the same at the earliest possible as has been handed over to the other unit holders in the same block. Further, the complainant has requested several times to the respondents to pay the delay compensation of Rs. 30 per sq. ft. per month for the entire delayed period in handing over the physical possession of the floor as per the clause no. 6 of the floor buyer agreement, however the respondent did not make any response to the genuine request of the complainant.

- k. That the complainant is having no residential accommodation in Gurugram and the aforesaid floor was purchased by the complainant in 2011 for the use of his son and daughter by paying his hard earned money to the respondents, however now the respondents are trying to defeat the valuable rights of the complainant in the aforesaid floor with malafide intention to earn more profit. It is relevant to mention herein that even the complainant has specifically requested the respondents that he has paid all the installments as per the demands of respondents and he is still ready and willing to pay the remaining sale consideration as agreed in the floor buyer agreement, however the respondents did not make any proper response to hand over the physical possession of the floor to the complainant.
- l. That the cause of action has been arisen to the complainant for filing the present complaint against the respondent, since the complainant had booked the aforesaid floor on 03.06.2011 and the respondents entered into floor buyer agreement on 15.03.2012 with the complainant in respect of the aforesaid floor and as per clause no. 5.1 of the floor buyer agreement, both the respondents were under obligation to hand over the physical possession of the aforesaid floor within a period of 24 months from the date of sanctioning of building

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plan or execution of floor buyer agreement whichever is later + grace period of 180 days, however the respondents failed to complete their promise. Even, the respondents did not pay a single penny to the complainant for delay in handing over the possession of the floor as agreed in clause no. 6 of the floor buyer agreement. The cause of action for filling the present complaint has been arisen to the complainant on the several occasion when the complainant visited in the office of respondents and requested to hand over the physical possession and to pay the delay compensation, however the respondents did not pay any heed to the genuine requests of the complainant. The cause of action further arose on 03.08.2020 when the complainant's son Digvijay Lamba sent an email on behalf of his father to the respondents requesting to deliver the unit no. A-140 GF along with compensation as per the buyer's agreement dated 15.03.2012 but they did not make any response.

- m. The cause of action lastly arose on 20.03.2024 when the complainant visited in the office of respondents and the requested to hand over the possession of the allotted floor and to pay the delay compensation, on which the respondents communicated to the complainant to take his money back with interest and not to claim physical possession of the allotted floor. The cause of action still subsists and continued since the respondents have not handed over the physical of the allotted floor and they did not pay the delay compensation as agreed in the floor buyer agreement till date.

C. The complainant is seeking the following relief:

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

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- a. Direct the respondents to deliver the physical possession of the unit along with delay possession charges.
- b. Direct the respondents to pay compensation of Rs.20,00,000/- to the complainant towards pain, suffering, mental agony and harassment etc. suffered by him.
- c. Direct the respondents to Pay Rs.1,50,000/- towards the legal and litigation expenses.

D. Reply filed by the respondent.

5. The respondent had contested the complaint on the following grounds:
 - a. That the relationship between the parties is thus contractual in nature and therefore, the rights and obligations of the parties are governed by the afore-mentioned agreement dated 15.03.2012. that it must be noted that the complainant willingly, consciously, and voluntarily applied for the purchase of the unit in the project of the respondent. Hence, the complainant agreed to be bound by the terms and conditions of the said agreement executed amongst the parties. Moreover, the amount payable to the respondent no.1 was agreed upon by the parties via the said agreement and mutual understanding between the parties.
 - b. That as per clause 5.1 of the agreement, the due date of offer of possession of the unit was 24 months from the date of sanction of building plans or execution of the agreement, whichever is later along with a grace period of 180 days subject to the various force majeure circumstances and timely remittance of outstanding dues by the complainant.
 - c. That it is most humbly submitted before this Authority that the construction of the unit was hampered due to and was subject to the

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

diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- d. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and

then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country. Therefore, it is safely concluded that the said delay in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.

- e. That from the facts indicated above and documents appended, it is comprehensively established that there exists various force majeure circumstances due to which the construction of the project in question was gravely hampered and it is due to the said force majeure circumstances that the unit is not constructed till date and therefore, it is most humbly submitted before the authority to kindly allow the respondent to refund the entire amount paid up by the complainant to the respondent no.1 as per the terms and conditions of the agreement.
 - f. That in the absence of any construction of the unit, the possession cannot be allowed to the complainant. That in light of the above-mentioned facts and circumstances, the doctrine of supervening impossibility applies. The doctrine of supervening impossibility or the doctrine of frustration becomes applicable when a contract becomes impossible to perform due to the happening of some unforeseen circumstances which were beyond the control or calculation of the parties involved.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

7. The authority 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act 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

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- (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;

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondents:

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

11. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.
12. A builder buyer's agreement for unit no. A-140, ground floor was issued by respondent to complainant and the same was executed on 15.03.2012. Therefore, the due date of handing over of possession is taken from the clause of the agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 15.09.2014. The events such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi and the Covid-19 pandemic among others were for a shorter duration of time and were not continuous as there is a delay of more than ten years and even

happening after due date of handing over of possession. There is nothing on record that the respondents have even made an application for grant of occupation certificate. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. 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.

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

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

14. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 15.09.2014 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to orders of court and the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the

deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondents to deliver the physical possession of the unit along with delay possession charges.

15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 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."

16. Clause 5 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

5. Possession

5.1 "... the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanction of building plans or date of execution of Floor Buyer's Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under Act in respect of the entire colony."

(Emphasis Supplied)

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17. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.
18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This

is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within a period of 24 months from the date of sanction of building plans or date of execution of floor buyer's agreement, whichever is later, and further provided in agreement that promoter shall be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. The period of 24 months expired on 15.09.2014 (calculating from the date of execution of buyer's agreement i.e., 15.03.2012).
20. The Authority put reliance on the judgement dated 08.05.2023 of Hon'ble Appellate Tribunal in **Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

"As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the

allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

21. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 15.09.2014 including grace period of 180 days.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

23. The legislature in its wisdom in the subordinate legislation under 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.

24. 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., 22.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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;"*

26. 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 the complainant in case of delayed possession charges.

27. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date.

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By virtue of clause 5 of the buyer's agreement executed between the parties on 15.03.2012, the possession of the subject flat was to be delivered within a period of 24 months from the date of sanction of building plans or date of execution of floor buyer's agreement, whichever is later. For the reason above, the due date of possession is to be calculated from the date of execution of buyer's agreement 15.03.2012 and it is further provided in agreement that promoter is entitled for a grace period of 180 days. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 15.09.2014. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.09.2014 till valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Direct the respondents to pay compensation of Rs. 20,00,000/- to the complainant towards pain, suffering, mental agony and harassment etc. suffered by him.

G.III. Direct the respondents to Pay Rs. 1,50,000/- towards the legal and litigation expenses.

29. The above-mentioned reliefs no. G.II and G.III as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

30. The complainant is seeking relief w.r.t compensation and harassment and litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions of the authority

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are directed to offer the possession of the allotted unit after obtaining occupation certificate. In case the allotted unit is not available, an alternate and similar unit be allotted to the complainant, at the same rate and specifications at which the unit was earlier purchased within two months from the date of this order and handover the possession of the alternative unit to the

- complainant after obtaining occupation certificate/competition certificate/ part OC/CC from the competent authority as per obligation under section 11(4)(b) read with section 17 of the Act, 2016.
- ii. The respondents are directed to pay delayed possession charges at the prescribed rate of interest @11.10% p.a. for every month of delay from the due date of possession i.e., 15.09.2014 till valid offer of possession plus two months after obtaining OC from the competent authority or actual handing over of the unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
 - iii. The arrears of such interest accrued from 15.09.2014 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
 - v. The rate of interest chargeable from the allottees 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 allottees, in case of

default i.e., the delayed possession charges as per section 2(za) of the Act.

- vi. The respondents are also directed not to charge anything which is not part of builder buyer's agreement.
32. Complaint as well as applications, if any stands disposed of accordingly.
33. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 22.11.2024