

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

Complaint no. :	3936 of 2024
Date of filling of complaint:	11.11.2024
Order reserved on:	10.01.2025
Order pronounced on:	04.04.2025

Vandana Gupta D/o Sh. Suresh Chand Gupta  
**Address:** -RZ-681A, Street No. 27, Sadh Nagar, Part-2,  
Palam Colony, Near Atithi Bhawan, New Delhi - 110045.

**Complainant**

Versus

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

**Respondents****CORAM:**

Shri Arun Kumar

**Chairman****APPEARANCE:**

Shri Aksh Yadav (Advocate)

Complainant

Shri Harshit Batra (Advocate)

Respondents

**ORDER**

1. The present complaint dated 11.11.2024 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:

Sr. No.	Particulars	Details
1.	Name of the project	Terra, Sector-37D, Gurugram
2.	Nature of the project	Group Housing Towers
3.	Area of the project	19.74 acres
4.	Rera Registered	Registered 299 of 2017 Dated:- 13.10.2017
5.	DTCP Licence	Licence no.-83 of 2008 and 94 of 2011.
6.	Allotment letter	10.12.2012 (As on page no. 47 of reply)
7.	Date of execution BBA	01.04.2013 (As on page no. 26 of complaint)
8.	Unit no.	T20-ST-001 (As on page no. 34 of complaint)
9.	Unit area	1998 sq. ft. Increased super area 2443 sq. ft. i.e., 22.27% increased
10.	Possession clause	<p><b>Clause 5 POSSESSION AND HOLDING CHARGES</b></p> <p>5.1 The Seller/confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a <b>Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</b></p> <p><b>Clause 1 DEFINITIONS:</b></p> <p>1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party</p>



		<i>shall offer the possession of the Unit to the Purchaser's <b>within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</b></i> <i>[Emphasis supplied]</i>		
11.	Grace period	Grace period allowed		
12.	Date of sanction of building plan	21.09.2012 [ As per page 6 of reply]		
13.	Due date of possession	01.04.2017 [Calculated 42 months from date of execution of BBA being later + 180 days]		
14.	Total sale consideration	Rs.1,04,89,500/- [as per BBA at page 32 of complaint] Rs.1,85,49,279/- (As per statement of account page 121 of the reply)		
15.	Total amount paid by the complainant	Rs.1,33,00,594/-		
16.	In- principal Occupation certificate	09.12.2021 (As on page no. 117 of reply)		
17.	Offer of possession for unit T20-ST-001 admeasuring 2,443 sq. ft.	13.12.2021 [page 119 of reply]		
18.	Payment request and reminder letter	10.12.2015, 13.10.2016, 08.01.2018, 13.01.2022, 02.02.2022, 15.02.2022, 24.03.2022		
19.	Occupation certificate	24.08.2022		
20.	Unit Termination /Cancellation letter sent on	09.11.2022 [page 140 of reply]		

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
  - a. That the complainant applied for the said flat/unit with the respondents vide application form along with necessary documents. At the time of submitting the application form, the respondents allotted a flat/unit bearing no. T20-ST-001, admeasuring 1998 Sq. feet (185.62 Meter).

- b. That being lured by such representations and assurances made by the respondents, the complainant decided to put her life savings and hard earnings in the said project. That on 01-04-2013 respondent executed the flat buyer agreement a pre-printed one-sided, arbitrary, and unilateral Agreement to sell the unit/flat bearing no. T20-ST-001, admeasuring 1998.00 sq. ft. (185.62 meter). That as per the agreement, the respondents had handover the physical possession within 42 months from the date of the execution of the flat buyer agreement i.e., on or before 01.04.2017.
- c. That as per the flat buyer agreement dated 01.04.2013, the basic sale price of the unit/flat is Rs.1,04,89,500/- (excluding other charges). That the complainant has paid an amount of Rs. 1,33,00,594/- to respondent. The complainant has paid more than 100 % amount of BSP to respondent against the said unit.
- d. That the respondent as per the flat buyer agreement were required to handover the physical possession of the unit on or before 01.10.2017 but the respondents failed to give the possession of the unit till date. That the respondents delayed the construction and possession of the said unit because of their own fault.
- e. That the complainant after many requests and deliberation handed over a letter dated 13.12.2021 and bearing invoice no. INV2122/H002841 demanding an amount of Rs. 60,79,684/-. The respondents through said letter gave an offer of possession for unit no. T20 ST001 on ground floor at sector – 37 D. The complainant was shocked and surprised that the respondent increased the final super area of the unit/flat to 2443 Sq. Ft. (226.96 Sq. Meter) from 1998.00 Sq. Ft (185.62 Sq. Mt.). It is therefore specifically mentioned that the

respondent without the consent of complainant increased the final super area on paper whereas nothing has changed on ground. That the complainant visited said unit/flat and she was shocked and surprised to know that instead of increasing the area of unit the respondent has constructed a unit with different dimensions than as agreed between both the parties in the floor plan and builder buyer agreement. The respondent has allegedly increased the super area without the consent or intimating to complainant and thus complainant is not bound by the increased super area and any alleged liabilities arising there from.

- f. That the respondents through letter dated 13-12-2021 have demand extra amount of Rs. 60,79,684/- from complainant. The complainant is not liable to pay any additional amount which was not agreed under flat buyer agreement.
- g. That the delivery of possession of the aforementioned unit allotted to the complainant has been delayed due to non-completion of the said project by the respondents on time due to illegal misappropriation of the funds, callous attitude and malafide of the respondents.
- h. That the complainant also sent a legal notice dated 28.02.2022 to the respondents vide registered post but the respondents out of their sheer adamic and fraudulency neither replied nor took any action on the legal notice.
- i. That thereafter in pursuance of their fraudulent intentions, the respondents issued a cancellation letter dated 09.11.2022, whereby the respondents have allegedly cancelled the unit of the complainant which is illegal and is liable to be quashed.

**C. The complainant is seeking the following relief:**





4. The complainant has sought following relief(s):
- Direct the respondents to deliver the physical possession of the unit along with delay possession charges.
  - Direct the respondent to declare the cancellation letter dated 09-11-2022, as null and void.
  - Direct the respondents to handover an alternate unit of similar area in the same project of the same nature.

**D. Reply filed by the respondents.**

5. The respondents have contested the complaint on the following grounds:
- That the complainant being interested in the residential project of the Respondent No.1 known under the name and style of "PARK TERRA" (hereafter referred to as the "Project") applied for the allotment of a flat vide application form dated 19.09.2012. At this stage, it is pertinent to note that the complainant had made the booking, only after being completely satisfied with the Project and its exemplary construction quality.
  - That the booking of the Complainant was accepted by the Respondent No.1 and on 10.12.2012 the Complainant was tentatively allotted a unit bearing no. T20-ST-001, Tower T20 tentatively admeasuring 1998 sq. ft. super area (hereafter referred to as the "Unit").
  - That consequently, a flat buyer's agreement dated 01.04.2013 was executed between the complainant and respondents. It is pertinent to mention that the agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
  - That after the allotment of the unit, the complainant had also executed an undertaking along with an affidavit as per which the



complainant agreed to the tentative nature of the super area of the unit and had also undertaken to have no objection if the layout or the building plans of the unit or the project may be changed for any reasons whatsoever.

- e. That the complainant took a home loan for remittance of the sale consideration for the unit in question in lieu of which a tripartite agreement dated 28.04.2014 was executed between the complainant, respondents and State Bank of India.
- f. That as per the agreement executed between the parties, both the parties were obligated to fulfil their respective obligations. That the due date of offer of possession, as per clause 5.1, 1.6 and 1.18 of the agreement is 42 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later with a grace period of 180 days, subject however, to the force majeure circumstances, intervention of statutory authorities and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.
- g. That the due date is being calculated from the date execution of the agreement dated 01.04.2013 as it is later than the building plan dated 21.09.2012. Hence, the proposed due date comes out to be 01.04.2017. It is imperative to mention here that the due date of delivery of the unit was subjective in nature and was dependent on the force majeure circumstances and the purchaser/allottee complying with all the terms and conditions of the agreement along with timely payments of instalments of sale consideration.
- h. That it is most humbly submitted that the construction of the unit was hampered due to and was subject to the happening of the force

majeure and other circumstances beyond the control of the company, the benefit of which is bound to be given to the respondents no.1 in accordance with clause 1.17 and 10.1 of the agreement.

- i. At this stage, it is categorical to note that respondents were faced with various 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 Respondents 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 Respondents 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.

- j. That the aforementioned circumstances are in addition to the partial ban on construction. In the recent past, the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- k. 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.

- I. That from the facts indicated above and documents appended, it is comprehensively established that a period of 313 days was consumed on account of circumstances beyond the power and control of the Respondents, 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 Respondents have 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 42 months as has been provided in the Agreement. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of

2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 313 days need to be rightly given to the Respondent-builder.

- m. 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.1 had the right to suspend the construction of the Project upon happening of circumstances beyond the control of the Complainant, however, despite all the hardships faced by the Respondent No.1, the Respondent No.1 did not suspend the construction and managed to keep the Project afloat through all the adversities.
- n. Furthermore, it needs to be seen 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. The demands were raised as per the agreed payment plan however, despite the same, the complainant has delayed the payment against the unit.
- o. That it was the obligation of the complainant to make the payments as per the adopted payment plan and agreed terms and conditions of the agreement. That the timely payment of the sales consideration of the unit was the essence of the agreement executed between the parties as per clause 7 of the Agreement.
- p. It is submitted that various demand letters were raised as per the agreed payment plan however, the complainant had continuously delayed in making the due payments, upon which, various payment



request letters and reminder notices were also served to the complainant from time to time. That the bonafide of the respondents is also essential to be highlighted at this instance, who had served request letters at every stage and reminder notices in case of non-payment.

- q. It is imperative to note at this stage that even after various hardships faced by the Respondents due to Force Majeure circumstances and delay in remittance of outstanding dues by the allottees like the Complainant, the Respondent No.1 was able to complete the construction of the Project and had thereby obtained the Occupation Certificate for the same on 09.12.2021 and hence lawfully offered the possession of the above-noted unit to the complainant on 13.12.2021.
- r. It is most humbly submitted before the Authority that the offer of possession of the unit provided by the complainant is a valid offer of possession and all the demands raised by the respondent no.1 in the said offer of possession are valid charges and as per the agreement executed between the parties.
- s. That it is submitted that the last payment was made by the complainant on 06.02.2018. That due to failure of the complainant in remitting the outstanding dues with regards to the Unit in question, the Respondent No.1 was constrained to send multiple reminder letters and thereby a Final Demand letter dated 24.03.2022 for payment of outstanding dues by the Complainant which categorically notes that if the Complainant failed to remit the outstanding dues within a period of 15 days, the unit of the Complainant shall stand terminated.



- t. That failure of the Complainant in remitting the outstanding dues even after various reminder and demand letters, the Complainant was considered under default, and upon the failure of the Complainant to rectify his default, the Respondent No.1 was left with no other option but to terminate the unit of the Complainant.
- u. 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 had a right to terminate the Unit. That multiple opportunities were given to the Complainant to rectify his 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 an ample period of time, the Respondent No.1 was constrained to terminate the allotment of the unit of the Complainant by issuing the termination letter dated 09.11.2022.
- v. 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.1 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 delayed payments, brokerage charges, processing fees, any monetary benefit given to the purchaser.



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 observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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**

.....

(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.1 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. In the present matter, the builder buyer's agreement was executed between the parties on 01.04.2013. Therefore, the due date of handing over of possession is taken from the clause 5.1 read with 1.6 of the agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 01.04.2017. 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 among others were for a shorter duration of time and were not continuous as there is a delay of around five years and even happening after due date of handing over of possession. Though some allottees may not be regular in paying the amount due but 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 01.04.2017 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 much 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.**  
**G.II. Direct the respondent to declare the cancellation letter dated 09-11-2022, as null and void.**

**G.III. Direct the respondents to handover an alternate unit of similar area in the same project of the same nature.**

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 and 1.6 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

***Clause 5 POSSESSION AND HOLDING CHARGES***

*5.1 The Seller/confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.*

***Clause 1 DEFINITIONS:***

***1.6 "Commitment Period"*** shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser's within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.

17. The complainant submit that she was allotted a unit bearing no. T20-ST-001 vide builder buyer agreement dated 01.04.2013 under possession linked payment plan. Thereafter, complainant paid an amount of Rs. 1,33,00,594/- against the total sale consideration of Rs. 1,85,49,279/-. As per clause 1.6 of the agreement the respondent was required to handover



possession of the unit within a period of 42 months from the date of sanction of building plan or execution of agreement, whichever is later. The due date of possession comes out to be 01.10.2016[calculated from the date of BBA being later]. Further as per clause 5.1 of the buyer's agreement the respondent is entitled a grace period of 180 days. As far as grace period is concerned, the same is allowed. Therefore, the due date of handing over of possession was 01.04.2017.

18. The respondent submitted that the complainant is defaulter and have failed to make payment as per the agreed payment plan. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 09.12.2021 and thereafter, has offered the possession on 13.12.2021. The respondent has issued various reminder cum demand letters to the complainant and requested to pay the outstanding dues, but the complainant has failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated 09.11.2022. Accordingly, the complainant failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.
19. The counsel for the complainant during proceeding dated 10.01.2025 stated that the offer of possession was sent to the complainant with a demand of Rs. 60,00,000/- and the same was illegal. No OC has been obtained by the respondent in the year of 2021 and it was only for the clarification with conditions. The respondent has also increased the super area of the unit by 22.27% and went beyond the clause of the buyer's agreement.

Now, the question before the Authority is whether cancellation vide letter dated 09.11.2022 is valid in the eyes of law or not?





20. On consideration of the circumstances, the documents placed on record and submissions made by the parties, the Authority observes that the complainant was allotted the subject unit vide allotment letter dated 10.12.2012. As per possession clause 1.6 of BBA dated 01.04.2013, the possession of the unit was to be delivered to the complainant by 01.04.2017 including grace period of 6 months on account of force majeure circumstances. She has paid an amount of Rs.1,33,00,594/- against the sale consideration of Rs1,04,89,500/- agreed at time of buyer's agreement which is more than 100% of the consideration. Thereafter, the sale consideration was increased to Rs.1,85,49,279/- at the time of offer of possession. It is pertinent to mention here that the complainant has paid Rs.1,33,00,594/- of the sale consideration prior to the offer of possession and the same is evident as per Statement of Account annexed with offer of possession dated 13.12.2021.
21. Further, the counsels of the complainant states that letter of offer of possession given by the respondent is not a valid offer of possession. Various reasons have been put forth by the counsels for the complainant as the respondent has demanded additional demands at the time of offer of possession which are not the part of the builder buyer's agreement, etc. Therefore, at this stage, the authority clarifies the concept of 'valid offer of possession'. It is necessary to clarify this because after valid and lawful offer of possession, liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after

detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructure facilities have been laid and are operational. Such infrastructure facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.
- ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 60 days after completing prescribed formalities. Further, the promoter shall provide the unit to the allottees as per the specification agreed at the time of execution of BBA. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects, can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest and seek compensation as per the Act of 2016.



iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. The Authority is of the view that the respondent is under obligation to raise demand as per the terms and conditions of the builder buyer agreement executed inter se parties and the respondent is directed not to charges anything, which is not part of the BBA.

22. The authority observes that the primary condition of valid offer of possession has not been fulfilled by the respondent as it failed to offer possession of the subject unit to the complainant after the receipt of occupation certificate by the competent authority. The respondent is contending that the occupation certificate was obtained on 09.12.2021 and thereafter, possession was offered to the complainant on 13.12.2021. Upon perusal of the document bearing Memo No. ZP-437-Vol.-III/AD(RA)/2021/31083 dated 09.12.2021, it is observed that the said document was issued by the concerned department in principle for the purpose of inviting objection/suggestion for construction of the 152 units (22 no's extra units) Tower 20 & 21 and Tower 24 & 25 instead of sanctioned 141 no's units, without approval of building plans and the same was also accompanied with certain conditions. Further, it is also specifically stated in the concluding para of the said letter dated 09.12.2021 that *"Thereafter, "Final" approval of the "Provisional" occupation along with sanction letter (BR-VII) will be conveyed after examination of the objections, if any received in this regard from the General Public/existing Allottees within 30 days after issuance of communication as and when issued by you."* Thus, it is concluded that the letter dated 09.12.2021 is not occupation certificate issued by the



concerned department under "Form BR-VII" under Code 4.10 of Haryana Building Code, 2017. Moreover, the occupation certificate was issued by the concerned department on 24.08.2022 in respect of the tower where the unit of the complainant is situated. In short, the respondent offered the possession to the complainant without obtaining occupation certificate. Accordingly, the offer of possession vide letter dated 13.12.2021 cannot be termed as valid offer of possession in absence of occupation certificate and demands raised vide the said letter are also set-aside for the aforesaid reason. In view of the above, the authority is of the opinion that cancellation letter dated 09.11.2022 is invalid and is hereby set aside by the authority being bad in eyes of law. The respondent is directed to re instate the allotted unit of the complainant as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainant within a period of 60 days from the date of this order.

23. **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.*

24. 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.
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., 04.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
26. **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;"*
27. 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.

28. 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. By virtue of clause 5 read with clause 1.6 of the buyer's agreement executed between the parties on 01.04.2013, the possession of the subject flat was to be delivered within a period of 42 months from the date of sanction of building plans or date of execution of 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 01.04.2013 being later and as far as grace period of 180 days is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 01.04.2017. However, the respondent has failed to handover possession of the subject unit to the complainant after obtaining occupation certificate on 24.08.2022. 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.
29. 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 complainant/allottee shall be paid, by the promoter, delayed possession charges against the paid-up amount at the prescribed rate of interest @11.10% p.a. for every month of delay from due date of possession i.e., 01.04.2017 till 24.10.2022 i.e., date of

receipt of occupation certificate (24.08.2022) plus 2 months, as per section 18(1) of the Act of 2016.

#### **H. Directions of the authority**

30. 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 cancellation letter dated 09.11.2022 is hereby set aside. The respondent is directed to re instate the allotted unit of the complainant as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainant within a period of 60 days from the date of this order.
- ii. The respondent is directed to pay delayed possession charges against the paid-up amount at the prescribed rate of interest @11.10% p.a. for every month of delay from due date of possession i.e., 01.04.2017 till 24.10.2022 i.e., date of receipt of occupation certificate (24.08.2022) plus 2 months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- iii. The arrears of such interest accrued from 01.04.2017 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 as per rule 16(2) of the rules.
- iv. The respondent is further directed to issue a fresh statement of account after adjustment of delayed possession charges as per afore said direction at serial no. 30(ii) of this order within a period of 60 days from the date of this order. Thereafter, the complainant is



directed to pay outstanding dues, if any, as per section 19(6) and (7) of the Act of 2016.

- v. The respondent/promoter shall handover the physical possession of the allotted unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
  - vi. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - vii. The respondent is also directed not to charge anything which is not part of builder buyer's agreement.
31. Complaint as well as applications, if any stands disposed of accordingly.
32. File be consigned to registry.

**Dated: 04.04.2025**

**(Arun Kumar)**  
**Chairman**

**Haryana Real Estate Regulatory  
Authority, Gurugram**