



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	1295 of 2021
Date of filing:	10.12.2021
First date of hearing:	12.01.2022
Date of decision:	17.03.2025

Vandana Gandotra  
W/o Sh. Rajiv Gandotra  
R/o House no. 62, Sector-15-A,  
Escort Nagar, Faridabad, Haryana-121007

....COMPLAINANT

VERSUS

1. M/s BPTP Limited  
through its Managing Director,  
Registered office- M-11, Middle Circle,  
Connaught Circus,  
New Delhi-110001
2. Countrywide Promoters Pvt. Ltd.  
through its Managing Director,  
Registered office- M-11, Middle Circle,  
Connaught Circus,  
New Delhi-110001
3. Well worth Developers Pvt. Ltd.  
through its Managing Director,  
Registered office- M-11, Middle Circle,  
Connaught Circus,  
New Delhi-110001

.....RESPONDENTS

**CORAM: Nadim Akhtar**  
**Chander Shekhar**

**Member**  
**Member**

**Present:** - Sh. Akshat Mittal, Counsel for the complainant through VC.  
Sh. Hemant Saini, Counsel for the respondents.

**ORDER:(NADIM AKHTAR -MEMBER)**

1. Present complaint has been filed on 10.12.2021 by the complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT 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 table:



S.No.	Particulars	Details
1.	Name of the project.	Eden Estate, Faridabad, Haryana
2.	RERA Registered/not registered	Lapsed project
3.	Details of allotted unit.	Plot No. OM18-08, Block OM, admeasuring 269 sq. yds.
4.	Allotment letter	31.12.2018
5.	Plot Buyer Agreement	18.09.2019
6.	Deemed date of possession	31.12.2020
7.	Basic sale price	₹1,11,03,900/-
8.	Amount paid by the complainant	₹45,93,843/-
9.	Occupation certificate received on	No
10.	Offer of possession	No
11.	Payment plan	Construction linked plan

**B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:**

3. Facts of the present complaint are that the Respondents floated a scheme for the development of a residential township under the name and style of "Eden Estate" on land situated in the revenue estates of Faridabad, Haryana. Complainant was offered a residential plot for a total sale consideration of ₹1,11,03,900/-, which included Basic Sale Price of ₹1,04,50,650/-. The





Respondents approached the complainant for the booking of a plot, and accordingly, the complainant made a booking on 13.12.2018.

4. That in pursuance of the said booking, the complainant made payments to the respondents amounting to ₹45,93,843/- through various transactions between the period of 17.12.2018 to 24.05.2019. Copies of the receipts and acknowledgements are annexed as Annexure C-1 (Colly).
5. That the Respondents allotted Plot No. OM18-08, Block OM, measuring 269 sq. yards to the Complainant vide an Allotment Letter dated 31.12.2018 (Annexure C-2). Respondents violated Section 13 of the Real Estate (Regulation and Development) Act, 2016 by accepting more than 10% of the cost of the plot without entering into a written agreement for sale and without registering the same.
6. That it was assured to the Complainant that possession of the plot would be handed over within one year from the date of allotment, and that the Plot Buyer's Agreement would be executed immediately thereafter. However, the said agreement was only executed on 18.09.2019, i.e., after a delay of nearly 9 months. As per the Plot Buyer's Agreement (Annexure C-3), possession was to be handed over on or before 31.12.2020, with the promoter's endeavour to do so by 31.12.2019. However, the possession has not been handed over to date.



7. That upon site inspection, the Complainant found that no substantial construction had taken place. Local inquiries revealed that the construction was negligible and at a standstill, indicating that the project existed only on paper and was not being developed in reality. That the time stipulated for completion has lapsed and the project is still far from completion, causing severe harassment to the Complainant.
8. That despite the lapse of more than three years since the booking and over two years since the agreed possession date, the plot remains incomplete. No Occupation Certificate has been applied for or granted, and the current condition of the project is grossly incomplete (Photographs annexed as Annexure C-4 (Colly)). That although the Complainant has the right to withdraw from the project under the RERA Act, she, in good faith, still seeks possession of the plot along with delayed possession interest and compensation.
9. That under Section 18(1) of the RERA Act, the Complainant is entitled to interest for every month of delay until possession is handed over. Respondents have violated the terms of the RERA Registration Certificate (Annexure C-5), particularly Clause 4 which mandates compliance with the RERA Act and Rules and prohibits entering into agreements in contravention of the said provisions.

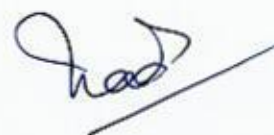




10. That the Respondents have breached Sections 12, 13, and 18(1) of the RERA Act and are liable to be penalized under Section 61, which allows imposition of penalty up to 5% of the project cost for contravention of the Act.
11. That the present complaint is filed by Smt. Vandana Gandotra through her husband and General Power of Attorney holder, Sh. Rajiv Gandotra. A copy of the GPA is annexed as Annexure C-6.

**C. RELIEFS SOUGHT**

12. That the complainant seek following relief and directions to the respondent:-
- i. To direct the respondents to immediately hand over the physical and uncompromised possession of the plot in question, to the complainant allottee
  - ii. To direct the respondents to compensate the complainant for the delay in offer of possession of the plot, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation & Development) Rules, with effect from 31.12.2019 till actual handing over of possession of the plot complete in all respects, on the entire deposited amount of Rs. 45,93,843/- (Rupees Forty Five Lakh, Ninety Three Thousand, Eight One hundred Forty Three only qua the said plot which has been deposited with the respondent promoters by the complainant.
  - iii. To direct the respondents to pay a sum of Rs. 20,00,000/- on account of grievance and frustration caused to the complainant by the miserable attitude



of the respondents and deficiency in service and for causing mental agony cause to complainant along with interest from the date of filing the present complaints till its realization.

- iv. The registration, if any, granted to the Respondents for the project namely; "Eden Estate", situated in the revenue estates of Faridabad, District Faridabad, Haryana, under RERA read with relevant Rules may kindly be revoked under Section 7 of the RERA for violating the provisions of The Act.
- v. To impose penalty on the respondents under section 61 of the Act for contravention of the provisions of the Act, as elaborated in the complaint.
- vi. The complainant may be allowed with costs and litigation expenses of Rs. 1,50,000/-;
- vii. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the instant complaint.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS**

- 13. The respondents submitted a detailed reply on 04.04.2022 contesting the complainants' claims on several grounds.
- 14. That the present complaint is not maintainable on the ground that:
  - a. Lack of Authority of Complainant:

The Complaint is filed by Mr. Rajiv Gandotra under a General Power of Attorney (GPA) from Ms. Vandana Gandotra. The GPA only authorizes





actions related to *sale or transfer* of the property, not litigation. Hence, Mr. Rajiv Gandotra lacks authority to file the present Complaint, making it non-maintainable.

b. No Privity of Contract with Respondent No.1:


There is no contractual relationship between the Complainant and Respondent No.1 (BPTP Ltd.). No documents have been submitted to support the inclusion of Respondent No.1 in the case. Therefore, Respondent No.1 should be removed from the array of parties.

c. No Cause of Action:

Possession was offered to the Complainant on **04.03.2020**, well within the agreed timelines under the Plot Buyer Agreement (PBA). The delay, if any, is due to the Complainant's failure to clear outstanding dues and take possession. Hence, no cause of action arises, rendering the Complaint liable for dismissal.

d. Violation of Sections 19(6), 19(7), and 19(10) of RERA:

The Complainant failed to make timely payments as per the PBA. Multiple reminders and termination letters were issued due to repeated defaults. This is a violation of the obligations imposed under Section 19(6), 19(7), and 19(10) of the RERA Act, disqualifying the Complainant from seeking relief under the same.





e. Approach with Unclean Hands:

The Complainant has concealed critical facts such as:

- i. Repeated defaults in payments,
- ii. Issuance of termination cum intimation letters,
- iii. Offer of possession already made in 2020.

Such concealment and misrepresentation amount to abuse of process and fraud upon the Authority.

f. Possession Timelines Duly Met:

As per Clause 10.1 and 10.2 of the PBA, the possession was to be offered by 31.12.2020 and the Respondents complied by offering possession on 04.03.2020. The Complainant selectively interpreted the clauses while ignoring her own non-compliance.

15. The Complainant approached the Respondents for the booking of a residential plot in the project "Eden Estate," located at Sector 81, Faridabad, Haryana, through her broker, M/s Better Homes. After reviewing and understanding the indicative terms and conditions of the Application/Booking Form, the Complainant proceeded to book a plot and paid a sum of ₹9,45,000/- as part of the booking amount. As per the Application Form, 10% of the Basic Sale Price (BSP) amounting to ₹10,45,065/- was required. A copy of the



Application/Booking Form dated 13.12.2018 is annexed as Annexure R/1 (Colly).

16. Pursuant to a draw of lots, Plot No. OM18-08 admeasuring 269 square yards was allotted to the Complainant, which was duly accepted by her through a consent letter dated 28.12.2018. A copy of the consent letter is annexed as Annexure R/2. Subsequently, an Allotment Letter dated 31.12.2019 was issued by the Respondents formally allotting the said plot to the Complainant. A copy of the Allotment Letter is annexed as Annexure R/3.
17. Despite repeated communications, including an email dated 26.02.2019 requesting the Complainant to visit the Respondents' site office for execution of the Plot Buyer Agreement, no action was taken by the Complainant. A copy of the email dated 26.02.2019 is annexed as Annexure R/4.
18. As per the agreed payment plan, a demand letter dated 27.02.2019 was issued for the milestone "within 3 months from the date of booking," with a payable amount due by 14.03.2019. This also included an outstanding balance of ₹1,00,065/- against the booking amount. The Complainant made part payments on 20.03.2019 and 28.03.2019. Copies of the demand letter and receipts are annexed as Annexure R/5 and Annexure R/6 respectively.
19. The Respondents continued to request the Complainant to complete all formalities for execution and registration of the PBA through email dated





19.04.2019, but to no avail. A copy of email is annexed as Annexure R/7. Another demand was raised as per the milestone "within 5 months from booking or upon laying of services," payable by 18.05.2019. The Complainant made another partial payment on 24.05.2019, but again failed to clear the full dues. A reminder letter dated 11.06.2019 was subsequently issued. Copies of relevant documents are annexed as Annexure R/8 (Colly).

20. Despite reaching the next milestone ("within 7 months from booking or upon start of road laying"), the Complainant did not make the required payments. Consequently, demand and reminder letters dated 02.07.2019, 12.07.2019, and 25.07.2019 were issued. In view of continued default, a termination cum intimation letter dated 06.08.2019 was sent. Copies of these communications are annexed as Annexure R/9 (Colly).
21. Only on 18.09.2019 did the Complainant approach the Respondents for execution of the PBA and the same was executed without any protest. A copy of the executed PBA is annexed as Annexure R/10.
22. In line with Clause 10.2 of the PBA, an Offer of Possession dated 04.03.2020 was made, subject to clearance of outstanding dues. However, the Complainant once again failed to remit the payment in contravention of Section 19 of the RERA Act, 2016. Consequently, termination cum intimation



letters were issued on 16.04.2020, 08.05.2020, and 14.07.2020. Copies of these documents are annexed as Annexure R/11.

**E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS**

23. The Ld. Counsel for the Complainant submitted that the complainant is seeking possession of the allotted unit along with interest for delay. It was pointed out that although the respondents claim to have made an offer of possession on 04.03.2020; this offer was invalid as it was not accompanied by the completion certificate, which is a statutory requirement. He further submitted that as per Clause 10.1 of the Plot Buyer Agreement, the deemed date of possession was 31.12.2019, but despite the lapse of substantial time, physical possession has not been handed over to the complainant. He also referred to the order dated 11.10.2022 passed by the Authority, wherein the respondents reiterated its claim that possession was offered on 04.08.2020. However, that offer too lacked a completion certificate and hence, cannot be treated as a valid offer of possession in the eyes of law. It was argued that the respondents is in violation of Section 13 of the RERA Act, 2016, which mandates that a developer shall not offer possession or demand payment without executing a proper agreement and obtaining necessary approvals including the occupation certificate. The complainant denied receiving any





valid offer of possession and submitted that even though demand letters were annexed by the respondents, the deemed date of possession was 2019 and ₹46 lakhs have already been paid by the complainant without any possession being given. Photographs of the plot, annexed at page numbers 58 and 59 of the complaint, show the unfinished condition of the plot, contradicting the respondent's claim that the unit was ready.

24. On the other hand, the learned counsel for the respondents initiated his arguments by submitting that the complainant had booked the plot which was allotted through an allotment letter dated 31.12.2018. Thereafter, Plot Buyer Agreement was executed between the parties on 18.09.2019. As per the agreement, the respondents were obligated to deliver possession of the unit by 31.12.2020. However, the respondents had already made an offer of possession on 04.03.2020, which is annexed as Annexure R-11 at page no. 101 of the reply. It was further submitted that the complainant had paid a sum of ₹46,25,194.96/- out of the total sale consideration of ₹65 lakhs. The respondents also placed reliance on various letters issued to the complainant demanding the remaining amount, including the first demand letter dated 26.07.2019 (annexed at page no. 68 of the reply) and a reminder notice dated 06.08.2019 (annexed at page no. 70). Additionally, the respondents annexed termination/cancellation notices dated 16.04.2020 and 08.05.2020 (annexed at



pages 112 and 114 respectively), along with another communication dated 14.07.2020 (annexed at page 116). The counsel highlighted Clause 10 of the Agreement which stipulates the deemed date of possession as 31.12.2020. However, there was an enabling clause providing that if the unit was completed by 31.12.2019, possession would be offered earlier. He referred to Clause 10.2, which states that upon obtaining the approved demarcation-cum-zoning plan and part completion certificate, the promoter shall offer possession in writing within three months from such approval. The counsel also referred to the respondent's application dated 13.03.2025, wherein it was submitted that the Eden Estate project is governed by Haryana's Self-Certification Scheme, 2010. Under this scheme, individual plot owners are permitted to commence construction after 15 days of notifying the DTCP, and occupation certificates are issued based on compliance with building plans, independent of the developer's license status. Several key documents were placed on record, including the Haryana Government Gazette Notification dated 16.03.2010 (Exhibit 3), DTCP Office Orders dated 28.02.2011 and 28.03.2011 (Exhibit 4), Public Notice dated 08.01.2014 (Exhibit 5), DTCP Order dated 26.12.2014 (Exhibit 6), and the DTCP circulars dated July 2015 (Exhibit 7). These documents collectively clarify that approvals for individual plot owners are not dependent on the developer's license renewal or





EDC/IDC payments and are aimed at protecting plot buyers from delays attributable to developer non-compliance. The respondents also relied on the Chief Engineer's report dated 26.02.2020 (Exhibit 9), which certified the completion and functionality of all essential services such as water supply, drainage, sewerage, roads, street lighting and horticulture in the project. This certification, as per the DTCP's orders, was sufficient to make a valid offer of possession. It was further stated that the zoning plan had already been approved in 2011, the Chief Engineer's report was obtained in February 2020, and the offer of possession was made in March 2020. Hence, the offer of possession is deemed valid. The respondents also contended that under Section 19(6) of the RERA Act, 2016, the complainant was duty-bound to take possession within two months from the date of offer, but failed to do so. Consequently, the respondents asserted that the plot is ready and the delay is attributable to the complainant. When the Authority inquired whether any amount was refunded post-termination, the learned counsel for the respondents submitted that through a letter dated 06.08.2019, the complainant was informed about the termination and was advised to collect the refund after forfeiture of the applicable amount. Lastly, the respondents relied upon the judgment of the Hon'ble Supreme Court in *Saradmani Kandappan & Ors. v. S. Rajalakshmi & Ors.*, decided on 04.07.2011, wherein it was held that



where the purchaser fails to make payments in a time-bound manner as per the agreed terms, the seller is not obligated to perform their reciprocal obligations and the contract becomes voidable at the option of the seller alone.

25. Authority enquired from ld. counsel for respondents whether the unit had been sold to a third party, to which he replied that unit has not been sold to any third person till date.

**F. ISSUES FOR ADJUDICATION**

26. Whether the complainant is entitled to get possession of booked plot along with delay interest in terms of Section 18 of RERA, Act of 2016?

**G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY**

27. The Authority has carefully examined the rival contentions and perused the documents placed on record. It is an admitted fact that a Plot No. OM18-08 admeasuring 269 square yards was allotted to the Complainant in the project of the respondents namely "Eden Estate, Faridabad, Haryana, which was duly accepted by the complainant through a consent letter dated 28.12.2018. Subsequently, an Allotment Letter dated 31.12.2018 was issued by the Respondents formally allotting the said plot to the Complainant. Plot Buyer Agreement was executed between the parties on 18.09.2019. Complainant has





made payment of ₹45,93,843/- to the respondents out of total sale consideration of ₹1,11,03,900/-

28. As per clause 10.1 of the Plot Buyer Agreement;

*"The promoter agrees and understands that timely delivery of possession of the plot to the allottee is the essence of the agreement. The promoter assures to handover possession of the plot on or before 31.12.2020 unless there is delay or failure due to force majeure, court order, Government Policy/ guideline, decisions affecting the regular development of the project. If the completion of the project is delayed due to above mentioned conditions then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the plot. However, the promoter shall endeavor to deliver the possession of the plot on or before 31.12.2019. it is hereby expressly clarified that the penalty provisions under RERA shall only be applicable if the promoter failed to give possession on or before 31.12.2020"*

A plain reading of Clause 10.1 makes it abundantly clear that timely delivery of possession is a fundamental part of the agreement between the promoter and the allottee. The clause sets 31.12.2020 as the final and committed date by which the promoter is contractually obligated to deliver possession of the plot. This date is not conditional—it is a firm deadline, unless certain exceptional circumstances arise. It is also stated that the promoter will "endeavour to deliver the possession of the plot on or before 31.12.2019." However, the use of the word "endeavour" makes it clear that this is a non-binding assurance or a target rather than a contractual obligation. The intention was to aim for early delivery, but no legal liability is attached to that



earlier date. Importantly, the clause explicitly clarifies that the penalty provisions under the RERA Act, 2016 would only be applicable if possession is not delivered by 31.12.2020 and not 31.12.2019. Accordingly, the Authority interprets that 31.12.2020 is the legally recognized "deemed date of possession" under the agreement. The earlier date of 31.12.2019 was merely an indicative goal, not a binding commitment. Therefore, for the purpose of adjudication in the present complaint, any determination of delay, default, or invocation of RERA penalties will be measured against the date of **31.12.2020**.

29. The first issue that requires adjudication is whether the *offer of possession* made by the Respondents to the Complainant on **04.03.2020** is legally valid and in conformity with the obligations under the RERA Act, 2016 and the terms of the Plot Buyer Agreement (PBA). The Authority has carefully examined the offer of possession letter dated 04.03.2020, annexed as Annexure R-11 at page no. 101 of the Respondent's reply. A plain reading of this letter reveals that the Respondent merely states:

*"We are pleased to inform you that the development activities at site have been completed and the plot allotted to you is ready for possession. We are hereby offering you the possession of your plot in terms of the plot buyer agreement."*





However, this letter does not enclose or refer to any documentary evidence substantiating that the required infrastructure and basic services were indeed completed at the time of issuing the possession offer. In addition, there is no mention of the status of grant of part completion certificate or completion certificate by the competent Authority in the said letter. There is no record or acknowledgment on file that such offer of possession letter was ever delivered to or received by the Complainant, rendering the offer procedurally incomplete and legally deficient. It is relevant to note that the Respondents, in his affidavit dated 13.03.2025, has referred to certain DTCP (Town and Country Planning) Orders, which state that possession may be offered post zoning plan approval even without a completion certificate, provided that all basic services have been functionally completed. The zoning plan approval in this case dates back to 25.07.2011. To support its stand that services were complete, the Respondents relies on the Chief Engineer's Report dated 26.02.2020, which certifies that functional services such as water supply, sewerage, electricity, roads, street lighting and horticulture were completed at the site. However, despite possessing this report, which is dated prior to the possession letter the Respondents has failed to establish that the said report was ever enclosed or shared along with the offer of possession on 04.03.2020. This is a material omission. Without sharing such a document, the



complainant was not in a position to know whether the site was indeed complete in terms of services. This undermines the legal validity of the possession offer, as the Complainant cannot be presumed to accept possession of a plot without verifiable proof of compliance with infrastructure and regulatory requirements. Moreover, and most critically, the Respondents have not obtained a Completion Certificate (CC) from the competent authority till date. As per Section 19(10) of the RERA Act, 2016, it is the obligation of the allottee to take possession only after the issuance of an Occupancy Certificate or Completion Certificate:

*"Every allottee shall take physical possession of the apartment, plot or building, as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."*

Hence, the statutory obligation to accept possession under Section 19(10) is triggered only when a valid completion or occupancy certificate is issued. In the present case, the Respondents have not furnished any such certificate issued by the competent authority under applicable local laws. It is also important to refer to the definition of "Completion Certificate" under the RERA framework, which states:

*"Completion certificate" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the*





*sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws."*

The absence of a valid Completion Certificate means that the project has not been formally declared complete by the competent authority, and therefore, any offer of possession made prior to such certification lacks legal enforceability under RERA. Furthermore, the RERA Authority is bound to adjudicate disputes in accordance with the provisions of the RERA Act, 2016. The primacy of RERA legislation must prevail, and the completion certificate is a statutory requirement that cannot be bypassed or substituted merely with an engineer's report or zoning approval.

In conclusion, the Authority holds that the offer of possession made on 04.03.2020 is not legally valid, as it was neither accompanied by substantiating documents nor proven to have been effectively delivered to the Complainant. The Respondent's failure to obtain the mandatory Completion Certificate constitutes a clear violation of Section 19(10) of the RERA Act, 2016. Consequently, the Complainant was under no legal obligation to accept possession in the absence of such certification. Furthermore, the Respondent's reliance on DTCP policies or internal reports cannot override the statutory mandate of RERA, which requires possession to be offered only after the issuance of a valid Completion Certificate by the competent authority.



Accordingly, the possession offer dated 04.03.2020 is rendered invalid in the eyes of law, and the Complainant's refusal to take possession cannot be held against her.

**30. Findings on the objections raised by the respondents.**

- i. *The Complaint is filed by Mr. Rajiv Gandotra under a General Power of Attorney (GPA) from Ms. Vandana Gandotra. The GPA only authorizes actions related to sale or transfer of the property, not litigation. Hence, Mr. Rajiv Gandotra lacks authority to file the present Complaint, making it non-maintainable.*

Authority observes that present complaint has been validly instituted under Section 31 of the Real Estate (Regulation and Development) Act, 2016, by Mr. Rajiv Gandotra, who is the duly authorized General Power of Attorney (GPA) holder of the allottee. The said GPA, executed and notarized on 23.02.2021 authorizes Mr. Rajiv Gandotra to undertake all acts, deeds, and things necessary and incidental to the sale, transfer, and management of the subject property, including the execution of agreements and other related documents. Notably, the GPA also contains a broad residuary clause empowering the attorney to do all that he may deem fit and proper for the benefit of the principal. Since the grievance raised in the present complaint pertains directly to the obligations under the Plot Buyer Agreement and the possession of the allotted unit and as the attorney is expressly authorized to act in all matters related to the said property, the filing of the complaint under





RERA is well within the scope of authority granted. Hence, the complaint is fully maintainable and deserves to be adjudicated on merits.

- ii. *There is no contractual relationship between the Complainant and Respondent No.1 (BPTP Ltd.). No documents have been submitted to support the inclusion of Respondent No.1 in the case. Therefore, Respondent No.1 should be removed from the array of parties.*

Authority is of the view that Respondents themselves, in their affidavit dated 13.03.2025 has admitted that Respondent No. 1 is not a separate legal entity as on date, thereby establishing that Respondent Nos. 1 and 2 are not distinct in the eyes of law. Further, it is evident from the contents of the complaint that the Complainant is seeking reliefs jointly and severally from all the Respondents. In such circumstances, Respondent No. 1 has been rightly impleaded as a necessary and proper party to the proceedings. Hence, the objection regarding misjoinder of parties is devoid of merit and deserves to be rejected.

- iii. *The Complainant failed to make timely payments as per the PBA. Multiple reminders and termination letters were issued due to repeated defaults. This is a violation of the obligations imposed under Section 19(6), 19(7) and 19(10) of the RERA Act, disqualifying the Complainant from seeking relief under the same.*

With regard to this objection raised by the respondents, Section 19(6), 19(7) and 19(10) of the Real Estate (Regulation and Development) Act, 2016 are reproduced below:



19(6) "Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

As per section 19 (7) of the Real Estate (Regulation and Development) Act, 2016-

"The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6)."

Section 19(10) is also reproduced below:

"Every allottee shall take possession of the apartment, plot or building as the case may be. Within a period of two months of the occupancy certificate issued for the said apartment, plot or building as the case may be"

The complainant opted for a Construction Linked Payment Plan (CLP) and made payments as per the demands raised by the respondents during each construction stage. The respondents admitted that the complainant made payments according to the construction progress. Additionally, the complainant paid a total amount of ₹45,93,843/-, out of plot's total value of ₹1,11,03,900/-. The respondent objection, claiming that the complainant is a defaulter under Sections 19(6), 19(7) and 19(10) of the Real Estate (Regulation and Development) Act, 2016 (RERA), and therefore cannot seek





relief under RERA, lacks merit. Sections 19(6), 19(7) and 19(10) impose obligations on the buyer to make timely payments and take possession when the promoter issues a notice of possession. However, since the complainant has made substantial payments, there is no default on the complainant's part. Therefore, the respondents claim that the complainant is not entitled to relief under RERA is unsustainable. Under RERA, the promoter is responsible for completing the project on time and obtaining all necessary approvals. Failure to meet these obligations allows the buyer to seek relief under RERA, such as compensation for delays or even refund with interest. Authority concludes that, the respondents objection under Sections 19(6), 19(7) and 19(10) of RERA is invalid, as the complainant has fulfilled payment obligations. On the other hand, the respondent's failure to deliver possession by the agreed date is in breach of RERA. The complainant is, therefore, entitled to seek relief under RERA provisions.

- iv. *The Complainant has concealed critical facts such as repeated defaults in payments, issuance of termination cum intimation letters and offer of possession already made in 2020. Such concealment and misrepresentation amount to abuse of process and fraud upon the Authority.*

Authority is of the view that complainant has not concealed any facts. The issue regarding payments was raised by the Respondents in a construction-linked payment plan and as previously stated, payments were contingent upon



the completion of construction stages. Therefore, any delay or non-payment was directly tied to the Respondent's failure to complete the construction on schedule, which the Complainant had no control over.

Secondly, regarding the termination letters and offer of possession, while the Respondents did issue these documents, they failed to provide crucial supporting evidence, such as completion certificates or documents certifying the delivery of basic infrastructure and services, as required by the RERA Act.

Lastly, there is no concealment of facts. The Complainant has been forthcoming in presenting the facts related to the case. Alleging concealment or fraud is a baseless accusation in light of the Respondent's own failure to adhere to the legal and contractual obligations. In conclusion, the Complainant's actions are in no way an abuse of process or fraudulent. The Respondent's arguments are merely an attempt to shift responsibility for its own defaults onto the Complainant.

- v. *As per Clause 10.1 and 10.2 of the PBA, the possession was to be offered by 31.12.2020, and the Respondents complied by offering possession on 04.03.2020. The Complainant selectively interpreted the clauses while ignoring her own non-compliance.*

Authority observes that while the Respondents refers to Clause 10.1 and 10.2 of the Plot Buyer Agreement (PBA) and claims compliance by offering





possession on 04.03.2020, it is crucial to examine the situation in its entirety rather than selectively interpreting the clauses. Clause 10.1 of the PBA specifies that the possession was to be offered by 31.12.2020 and this was the final date for the delivery of possession. Offering possession on 04.03.2020, which is before the stipulated deadline, does not imply that the Respondents was fully compliant with the terms of the agreement or the statutory requirements, particularly when the Completion Certificate was not obtained, nor were the necessary infrastructure services fully confirmed at that time. Further, it is the Respondent's failure to adhere to the contractual obligations that contributed to the delay in the process. The offer of possession made in March 2020 was invalid as it was not accompanied by the necessary supporting documents or certifications, such as the Completion Certificate and confirmation of the services (water, sewerage, roads, etc.) being fully operational, as required under the RERA Act. The Complainant could not be expected to take possession of a unit that was not legally certified and did not meet the agreed-upon conditions. In conclusion, while the Respondents may claim to have offered possession in compliance with Clause 10.1 and 10.2, the offer was made without the necessary documentation and certification, rendering it invalid. The Complainant's non-compliance was directly tied to



the Respondent's failure to complete the construction and meet contractual obligations.

31. Authority further observes that possession of the unit should have been delivered by 31.12.2020 but it is an admitted fact that respondents had miserably failed to fulfill his obligation to deliver the possession of the unit within stipulated time. Respondents have not even received completion certificate till date and valid offer of possession as per terms of the agreement has not been made thereafter to the complainant till date.
32. Now, issue which remains to be adjudicated is delay interest. Respondents had not offered valid possession of unit till date. Complainant herein is interested in having possession of her unit. In these circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondents are liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondents in this case have not made valid offer of possession to the complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date of possession i.e., 31.12.2020 up to the date on which a valid offer is sent to them as per above directions of the Authority. For purposes of calculation, delay interest is calculated upto date of this order.





As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

33. In the present complaint, the complainant intend to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

*"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".*

34. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(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-*

- 1. 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;*



35. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

*"Rule 15: "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".*

36. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 17.03.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%.

37. Hence, Authority directs respondents to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the due date of possession i.e. 31.12.2020 to date of valid offer of possession, which is yet to be issued by respondents to complainant. For purpose of calculation delay interest is calculated upto date of this order and for further delay, if any caused by respondents, monthly interest is awarded.





38. Authority has got calculated the interest on total paid amount from due date of possession i.e., 31.12.2020 till the date of order, which works out to ₹21,48,635/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 17.03.2025 (in ₹)
	45,93,843/-	31.12.2020(Deemed date of possession)	21,48,635/-
Monthly interest commencing w.e.f. 17.03.2025.	43,308/-		

39. The complainant is also seeking ₹20,00,000/- on account of grivenace and frustration caused to the complainant by miserable attitude of the respondents and deficiency in service and for causing mental agony cause to the complainant along with interest from the date of filing the present complaints till its realization and ₹1,50,000/- for costs and litigation expenses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & 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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

40. The Authority notes that the complainant has neither argued nor pressed for reliefs numbered 4 and 5 as mentioned on page 20 of the complaint book. Therefore, the Authority deems it appropriate not to adjudicate on these reliefs.

#### **H. DIRECTIONS OF THE AUTHORITY**

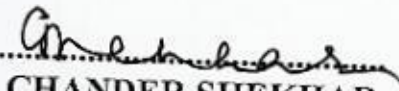
41. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the RERA Act, 2016 to ensure the compliance of obligations cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016
- i. Respondents are directed to offer possession of the unit within next 45 days alongwith Statement of Account issued in compliance of directions passed in this order incorporating therein delay interest of ₹21,48,635/-





to the complainant towards delay already caused in handing over the possession and monthly interest of ₹43,308/-

- ii. Further respondents are directed to execute the Conveyance Deed within 90 days after handing over of the valid legal possession to the complainant.
  - iii. Complainant will remain liable to pay balance consideration, if any, amount to the respondents at the time of actual possession offered to them in terms of this order of the Authority.
  - iv. The rate of interest is chargeable from the complainant by the respondents, in case of default shall be charged at the prescribed rate i.e., 11.10% which is the same rate of interest which the respondents shall be liable to pay to the complainant.
  - v. The respondents shall not charge anything more from the complainant except what is decided by the Authority in this order.
42. Hence, the complaint is accordingly disposed of in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
NADIM AKHTAR  
[MEMBER]