

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

Date of order: 27.03.2025

NAME OF THE BUILDER		Solutrean Buildings Technologies Pvt. Ltd.	
PROJECT NAME		Caladium, Sector 109, Gurugram	
S. No.	Case No.	Case title	Appearance
1.	CR/2919/2023	Mrs. Heminder Gill & Anr. all Legal Heirs, Late Shri Kanwar Pal Singh Gill Vs. Solutrean Buildings Technologies Pvt. Ltd. & Ors.	Shri Rahul Malik (Advocate for Complainant)  Shri Rishi Gujral (Advocate for Respondent)
2.	CR/2916/2023	Mrs. Heminder Gill & Anr. all Legal Heirs, Late Shri Kanwar Pal Singh Gill Vs. Solutrean Buildings Technologies Pvt. Ltd. & Ors.	Shri Rahul Malik (Advocate for Complainant)  Shri Rishi Gujral (Advocate for Respondent)

**CORAM:**

Shri Vijay Kumar Goyal

**Member**
**ORDER**

1. This order shall dispose of the aforesaid complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottee of the project, namely, "Caladium", Sector 109, Gurugram being developed by the same respondent/promoter i.e., Solutrean Buildings Technologies Private Limited. The terms and conditions of the buyer's agreements and fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	Caladium", Sector 109, Gurugram
<b>DTCP License No. and validity</b>	13 of 2011 dated 04.02.2011 Valid up to 03.02.2017
<b>HRERA Registered</b>	Not Registered
<b>Possession Clause</b>	<i>11. Time of handing over of possession Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to the Allottee within 36 months (three years) with a grace period of six months (hereinafter referred to as "the Stipulated Date") from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, subject always to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.</i>
<b>Commencement of construction</b>	NA
<b>Occupation certificate</b>	08.11.2017



Sr. No.	Complaint No., Case Title, and Date of filing of complaint	Unit no. & size	Date of execution of BBA	Total Sale Consideration / Total Amount paid by the complainant	Offer of possession/ Cancellation letter
1.	<b>CR/2919/2023</b> Heminder Gill & Anr. all Legal Heirs, Late Shri Kanwar Pal Singh Gill  Vs Solutrean Buildings Technologies Pvt. Ltd. & Ors.  <b>DOF:13.07.2023</b> <b>Reply: 22.11.2023</b>	B-161, 16 <sup>th</sup> floor  Super area- 2430 sq. ft.	22.04.2013	<b>BSP- Rs.72,90,000/-</b> (page 67 of complaint)  <b>TSP- Rs.83,86,300/-</b> (page 67 of complaint)  <b>AP- Rs.80,16,520/-</b> (page 92 of complaint)	<b>O.O.P:</b> 06.12.2017  <b>C.L:</b> 24.08.2020, 25.08.2022
2.	<b>CR/2919/2023</b> Heminder Gill & Anr. all Legal Heirs, Late Shri Kanwar Pal Singh Gill  Vs Solutrean Buildings Technologies Pvt. Ltd. & Ors.  <b>DOF:13.07.2023</b> <b>Reply: 22.11.2023</b>	B-111, 11 <sup>th</sup> floor  Super area- 2430 sq. ft.	22.04.2013	<b>BSP- Rs.72,90,000/-</b> (page 63 of complaint)  <b>TSP- Rs.83,86,300/-</b> (page 63 of complaint)  <b>AP- Rs.80,04,725/-</b> (page 89 of complaint)	<b>O.O.P:</b> 06.12.2017  <b>C.L:</b> 24.08.2020, 25.08.2022

**The complainants in the above complaints have sought the following reliefs:**

1. Direct the respondent to pay delayed possession charges.
2. Direct the respondent to pay Rs.1,00,000/- for mental harassment, trauma mental inconvenience caused to the complainants.

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
DPC	Delayed possession charges
BSP	Basic Sale Price
TSP	Total Sale Price
AP	Amount paid by the allottee/s
OOP	Offer of Possession
CL	Cancellation letter

4. The aforesaid complaints were filed by the complainant-allottee against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of subject unit for not handing over the possession by the due date and cancelling the unit, seeking the physical possession of the unit along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant-allottee(s) are similar. Out of the above-mentioned cases, the particulars of lead case **CR/2919/2023 Heminder Gill VS Solutrean Buildings Technologies Private Limited and Others** are being taken into consideration for determining the rights of the allottee(s) qua the relief sought by them.

**A. Project and unit related details.**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

**CR/2919/2023 Heminder Gill V/S Solutrean Buildings Technologies Private Limited and Others**

S.No.	Particulars	Details
1.	Name of the project	"Caladium" village Pawala Khusropur, Sector 109, Gurugram
2.	Project area	15.881 acres
3.	RERA registered/not registered	Not Registered



4.	DTPC License no.	13 of 2011 dated 04.02.2011
	Validity status	03.02.2017
	Name of licensee	Chintels
5.	Unit no.	B-161, 16 <sup>th</sup> floor (page 38 of complaint)
6.	Unit admeasuring	2430 sq. ft. (super area) (page 38 of complaint)
7.	Date of execution of buyer's agreement	22.04.2013 (page 34 of complaint)
8.	Possession clause	11. Time of handing over of possession Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to the Allottee within 36 months (three years) with a grace period of six months (hereinafter referred to as "the Stipulated Date") from the date of actual start of the construction of a particular Tower Building in which the registration for allotment is made, subject always to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.
9.	Commencement of construction of subject tower	25.09.2013 (submitted by respondent on 25.03.2025 through clarification note)
10.	Due date of possession	25.03.2017 (calculated from the date of commencement of construction including grace period of 6 months)
11.	Basic sale price	Rs.72,90,000/- (as per payment plan in BBA page 67 of complaint calculated Rs.3000/- per sq. ft.)
12.	Total sale consideration	Rs.83,86,300/- (As per payment plan in BBA page 67 of complaint inclusive of BSP i.e. Rs.3000/- per sq. ft., EDC/IDC i.e. Rs.360/- per sq. ft.,



		<b>IFMS</b> i.e. Rs.50 per sq. ft., <b>Club membership</b> i.e. Rs.1,00,000/- per apartment)
13.	Total amount paid by the complainants	Rs.80,16,520/- (as per SOA dated 22.08.2022 page 92 of complaint)
14.	Reminder Letter	21.05.2019 (page 38 of reply)
15.	Death certificate of original allottee	09.06.2017 (page 101 of complaint)
16.	Surviving certificate letter	08.08.2017 (page 102 of complaint)
17.	Occupation certificate	08.11.2017 for block 7 to 10 (page 33 of reply)
18.	Offer of possession	06.12.2017 (page 34 of reply)
19.	Final Notice for payment	24.06.2019 (page 40 of reply)
20.	Cancellation Letter issued in the name of original allottee i.e Kanwarpal Singh Gill	24.08.2020 (page 43 of reply)
21.	Cancellation Letter issued in the name of legal heirs of original allottee	25.08.2022 (page 59 of complaint)

### B. Facts of the complaint.

8. The complainant has made following submissions in the complaint:

- That respondent no.1 is a company with the name 'Solutrean Building Technologies Ltd. and is developer of residential apartments by name of 'Caladium' at Sector 109, Gurugram Haryana. The respondents no. 2 to 5 are the promoters/directors of the respondent no.1 and are persons in charge of and responsible for the conduct of affairs of respondent no.1.
- That in and around March-April, 2013, Mr. K.P.S. Gill, since deceased, booked an apartment bearing No. B-161 (Sixteenth Floor), Tower B, Caladium, Sector



- 109, Gurugram Haryana with an area of about 2430 square feet in the said project and paid a booking amount of Rs.20,00,000/- to the respondent no.1.
- iii. Further, an apartment buyer agreement dated 22.04.2013 was also executed between Shri K.P.S. Gill (since deceased) and respondent no.1 in respect of the subject unit and the total price of the subject unit was fixed at Rs.83,86,300/-. The said payment was construction linked.
- iv. That as per clause 11 of the said agreement dated 22.04.2013 the possession of the subject unit would be handed over by the company within 36 months with a grace period of 6 months from the actual start of the construction. Since, at the time of execution of the agreement the construction of the apartment was already commenced and therefore, the respondent was bound to deliver the possession of the subject unit and was to be handed over on or before 22.04.2016 or maximum by 22.10.2016. However, till date the respondent has not handed over the possession of the subject unit to complainants.
- v. That vide demand letter dated 21.06.2013, the respondent no.1 demanded the amount due towards casting of the first-floor roof slab. The allottee since deceased, kept on making payments as and when demanded by the respondent and in total paid an amount of Rs.80,19,150/- for the subject unit.
- vi. That the respondents did not offer the possession of the apartment within the stipulated period i.e. on or before 22.04.2016 or 22.10.2016 and there has been considerable delay in offering the possession of the subject unit.
- vii. That unfortunately allottee/Mr. K.P.S Gill expired on 26.05.2017 and after his death the complainants herein Mrs. Heminder Gill (wife), Mr. Hemant Pal Singh Gill (son) and Ms. Chitvan Gill (daughter) inherited the estate of Mr.

K.P.S. Gill, being his first-class legal heirs and there is no other class I legal heir of Mr. K.P.S. Gill.

- viii. That the legal heirs of the deceased Mr. K.P.S. Gill approached the respondent no.1, its officers, promoters, directors etc. several times for the substitution of the names of the legal heirs in place of late Mr. K.P.S. Gill and to provide the requisite procedure along with the documents required for the same.
- ix. That the complainants received a letter by the respondent no.1 dated 06.12.2017 for offer of possession of the subject unit and claimed an amount of Rs.17,25,872/- was due for payment. The total price of the said apartment was Rs.83,86,300/- out of which an amount of Rs.80,19,150/- had already been paid and therefore, the question of making further payment of Rs.17,25,872/- did not arise.
- x. That there was already delay in handing over the subject unit and therefore, the complainants were also entitled to interest for the delayed period. The complainants herein again approached the respondents for clarification on accounts and for the substitution of the names of the legal heirs in place of Mr. K.P.S. Gill (since deceased). After the death of Mr. K.P.S. Gill the complainant remained in touch with the respondent's office seeking information about the documentation work required for the transfer of the said apartment to and in favour of legal heirs of Mr. K.P.S. Gill and every time it was told that needful had already been done and nothing more was required.
- xi. That after a lapse of almost three years, the complainants received a letter dated 24.08.2020 by respondent no.1 which alleged that no steps for the change of the name of the legal heirs in place of Mr. K.P.S. Gill had been taken and also threatening the complainants that the apartment in question would be cancelled.



- xii. That in spite of being well aware that Mr. K.P.S. Gill had expired the respondents did not inform the procedure and documents required in their project for change of the name of the legal heir in place of Late Mr. K.P.S. Gill. That the malafide intentions of the respondent were also evident from the fact that the respondents issued the letter dated 24.08.2020 in a period when everybody was facing financial crises and financial crunch due to lockdown during Covid- 19 pandemic. The said letter had been issued knowing and being well aware of the fact that during these tough times, the complainants will be facing difficulties in making payment of the alleged dues.
- xiii. That the said letter dated 24.08.2020 was addressed to Mr. K.P.S. Gill, through the complainants. Thus, the respondents were well aware that the complainants are the legal heirs of Mr. K.P.S. Gill. That in the aforesaid facts and circumstances, the complainants got sent a legal notice dated 25.09.2020 through their counsel M/s O P Faizi & Co, thereby calling upon the respondents to recall the letter dated 24.08.2020, inform the documentation work required for changing the names of the legal heirs in place of the original allottee (Mr. K.P.S. Gill) in respect of the subject unit, provide the amount due/statement of account in respect of the said apartment, give due credit of the interest of the delay in handing over of the possession of the payments made in respect of the said apartment, hand over the possession of the said apartment along with provide registration number and registration certificate under RERA issued in the name of Solutrean Building Technologies Pvt. Ltd. in respect of the project. However, the respondents did not comply with the terms of the said notice sent a false and frivolous reply dated 21.10.2020. In the letter dated 21.10.2020 also the respondents did not disclose the procedure adopted by the respondents for the substitution of the name of legal heirs in place of Mr. K.P.S. Gill.

- xiv. Thereafter, the respondents have further sent letters dated 25.08.2022, 14.10.2022 and 24.11.2022 inter-alia alleging cancellation of the subject unit, initiation of refund and culminate the refund formalities even after the complainants were regularly approaching the respondents for substitution of the names of the legal heirs in the place of original allottee Mr. K.P.S. Gill with the willingness to pay the valid balance due amount with respect to the said apartment.
- xv. That in spite of making substantial payments, the respondent has neither substituted the names of the legal heirs of the original allottee i.e. Late Mr. K.P.S. Gill nor handed over the possession of the said apartment to complainants till date and have allegedly cancelled the allotment of the subject unit.
- xvi. That the intentions of the respondents have turned malafide, who after receiving substantial payment of the apartment in question intend to cancel the subject unit. The respondents have no right to cancel the booking of the subject unit.

**C. Relief sought by the complainant.**

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

- I. Direct the respondent to pay delay possession charges.
- II. Direct the respondent to pay Rs.1,00,000/- for mental harassment, trauma mental inconvenience caused to the complainants.

**D. Reply by the respondents.**

10. The respondent by way of written reply made following submissions: -

- i. That the respondent no. 1 i.e., M/S Solutrean Building Technologies Private Limited is a private limited company and is engaged in the business of construction and development of real estate projects and enjoys a reputation for itself in the real estate sector.



- ii. That respondent no. 2 is a legal entity in its own name having legal capacity to enter into agreements or contracts, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Thus, respondent no. 2 to 5 are merely the directors of respondent no. 1 and are not necessary parties to this complaint case being a case of a civil nature. Therefore, the respondent no. 2 to 5 are not necessary parties to the present complainant and reply is being filed by respondent no. 1 in its own name and on behalf of respondent no.2 to 5.
- iii. That the respondent no. 1 had developed a residential group housing under the name and style of "Caladium" Sector 109, Gurugram, Haryana. Since, the project was not covered under the ambit of RERA, the present complaint is not maintainable at the very face of it and the Authority has no jurisdiction to adjudicate the complaint in hand.
- iv. That the original allottee Mr. Kanwar Pal Singh Gill filed an application along with a Cheque of Booking Amount of Rs. 10,00,000/- dated 28.03.2013 for booking of Flat No. B - 161 on the 16<sup>th</sup> floor of Tower B of project "CALADIUM" admeasuring 2430 sq. ft. for a total price of Rs.83,86,300/- (excluding Taxes, Possession-related charges such as Electrification Charges, Advance Maintenance, Electricity and water Charges etc.).
- v. That the terms of the apartment buyer's agreement were duly executed between the original allottee Mr. Kanwar Pal Singh Gill and respondent no. 1 on 22.04.2013 and the construction linked instalment payment plan was signed between the parties. As per the milestones of the Payment Plan, respondent no.1 started raising demands and the original allottee Mr. Kanwar Pal Singh Gill cleared the demands with slight delays till the 15<sup>th</sup> Stage/ Milestone as per the payment plan. However, post the said payment



made in August 2016, no payment was ever received from the end of the original allottee Mr. Kanwar Pal Singh Gill.

- vi. That, the occupation certificate was duly issued on 08.11.2017 and accordingly, respondent no.1 issued the offer of possession with the demand of Rs.17,25,872/- along with a proper justifiable statement of account as of the said date being 06.12.2017. That at the time of raising the offer of possession, respondent no. 1 was unaware of the unfortunate death of Original allottee Mr. Kanwar Pal Singh Gill and no attempt was ever made by the inherited legal heirs of the original allottee to the respondent no. 1 to intimate regarding the said unfortunate incident. The complainants already admitted that they had received the offer of possession yet they chose to not give any reply to said offer of possession or make any payment. Nor any response was ever received by the respondents against the said offer of possession.
- vii. That acting considerately and being preoccupied with the full-fledged possession of the project, respondent no. 1 did not take any action for more than a year till 21.05.2019 when respondent no. 1 raised final reminder for payment of balance consideration through the only known legal heir known to the respondent no. 1.
- viii. That respondent no. 1 only became aware of the death of the original allottee through media and no action was taken till sending of this final reminder dated 21.05.2019 by the legal heirs of the original allottee. To further dismay, no reply to the said reminder was ever received by the legal heirs of the original allottee which clearly shows the intent to avoid making payment towards the genuine demand of possession of the flat.
- ix. That being a customer-centric organization, one more opportunity was given to the complainants by way of a final notice for payment of balance



consideration which was issued on 24.06.2019 through the only known legal heir known to respondent no.1. Further period of 30 days was given to the complainants to cure the continuous default. However, the said notice was again blatantly ignored by the known legal heirs of the original allottee.

- x. That persistent default and nonpayment on the end of the complainants constrained respondent no. 1 to cancel the allotment of the unit by way of issuing a cancellation of apartment buyer agreement dated 22.04.2013 on 24.08.2020 in terms of clause 6 of the binding apartment buyer agreement dated 22.04.2013.
- xi. The action of cancellation was only taken by waiting for a period of more than the continuous default of more than 2.5 years and after sending various reminders in this context. Instead of accepting their own default two of the complainants sent a legal notice dated 25.09.2020 in order to shift the blame of their own wrongdoing onto respondent no. 1. All the allegations made in the belated legal notice were frivolous and concocted just to coerce the respondent no. 1 into giving them possession of the unit without admitting the fact that they are defaulters from past almost 3 years. That acting diligently, respondent no. 1 replied to the frivolous and baseless legal notice by replying to the legal notice sent on 21.10.2020 categorically countering each and every baseless allegation/ assertion.
- xii. That again after receiving a befitting reply to their frivolous legal notice the complainants chose not to take any affirmative action for restoration or for seeking a refund of the amounts paid by them in terms of definitive clauses of the apartment buyers agreement dated 22.04.2013. This nonaction is conclusive in itself proving the delinquent approach of complainants playing fast and loose with respondent no.1.

- xiii. That again after a long period of 2 years, respondent no.1 issued a letter bearing the subject cancellation of allotment of unit no. B-161 to all the three legal heirs/complainants. Individually, explicitly reiterating the continuous default of 4.5 years on the end of complainants and gave the last opportunity to the complainants to make the balance payment as per the statement attached with the said letter in 10 working days and in explicit terms stated that non-action will result in final cancelation and refund will be initiated in terms of deduction provided in clause 6 of the agreement.
- xiv. To the utter shock of the respondents, no response was received to the said letter which constrained respondent no. 1 to initiate the refund and issue a letter bearing the subject "Initiation of Refund regarding Cancelation of Allotment" dated 14.10.2022 to all the complainants herein and call the legal heirs/complainants to provide certain documents for the culmination of refund formalities. The cancellation and refund were initiated after giving opportunities for more than 4.5 years and the action was legally and contractually tenable making the present complaint nothing but a belated afterthought to gain unjust enrichment by making spurious allegations against respondent no. 1.
- xv. That the respondent no. 1 was not interested in gaining any unjust amount from the complainants and accordingly again wrote to the legal heirs/complainants vide an email/ letter dated 24.11.2022 calling the complainants for "Request to culminate refund formalities regarding Cancellation of Allotment of Unit" which again went unanswered by the complainants. Respondent No. 1 was appalled by the continuous nonaction on the end of legal heirs/ complainants as they were not even coming forward to claim a refund of the amount even after repeated letters by respondent no. 1.



- xvi. That from the above narration of facts and communication from the end of respondent no. 1, not only the complainants were defaulters in making payments as per the demands and payment plan agreed upon between the parties, but they were also delinquent in replying to the letters, reminders, and demands raised by the respondent no.1 throughout the years. That in any agreement to sell/purchase time is of essence and when the allottee is consistently defaulting in making payments and taking possession then the developer cannot be expected to wait for time eternity for the allottee to act upon.
- xvii. That the original allottee being represented by the complainants/legal heirs had signed the apartment buyer's agreement dated 22.04.2013 after duly understanding the clauses stipulated at their own free will and as such, the parties are bound by the terms and conditions mentioned in the said EOI. The complainants were neither forced nor influenced by the respondent to sign the said EOI.
- xviii. That although the project does not fall in the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram, if the case was in the jurisdiction of HA-RERA then also the case is required to be dismissed *in limine* as the complainants defaulted in making payments and taking possession of the unit/flat for more than 4.5 years and after an array of reminders, letters, emails, and notices.
- xix. That the cancellation and refund initiation is done strictly in terms of the Apartment Buyers Agreement executed between the parties on 22.04.2013. No case is made out by the complainants as not making payment and delaying taking possession for more than 4.5 years even after numerous reminders, letters, emails, and notices construes as sufficient cause.
11. All other averments made by the complainant were denied in toto.

12. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

**E. Objection raised by respondent.**

**E.I Objection w.r.t deletion of R2 to R5 being not necessary party to the instant complaint.**

13. The complainants have filed a complaint against respondent no. 1 to 5, with respondent no. 2 to 5 being directors of respondent no. 1. However, the complaint is not seeking any specific relief against respondent no. 2 to 5. Since no substantive claims or obligations have been made against them, the authority finds no reason to issue any directions against respondent no. 2 to 5.

**F. Jurisdiction of the authority**

14. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I.Territorial jurisdiction**

15. As per notification no. **1/92/2017-1TCP dated 14.12.2017** issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**F.II. Subject matter jurisdiction.**

16. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

.....



(4) The promoter shall-

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**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.*

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

**G. Findings on the relief sought by the complainant.**

**G.I. Direct the respondent to pay delayed possession charges.**

18. The complainants through present complaint contends that the subject unit was booked by original allottee i.e. Mr. K.P.S. Gill in 2013 with Solutrean Building Technologies Ltd. and a builder buyer agreement was executed between original allottee and respondent on 22.04.2013 for a unit no. B-161, 16<sup>th</sup> floor against a total sale consideration of Rs.83,86,300/-. Despite making payments of Rs.80,19,150/- against the agreed sale consideration, the possession of the apartment was not delivered within the stipulated period. After death of K.P.S. Gill/original allottee in 2017, his legal heirs (the complainants) sought to transfer the property into their names. Further, the complainant allege that the respondent failed to inform them about the necessary procedures and documentation for such a transfer. Additionally, they claim that the respondent wrongfully demanded a further payment of Rs.17,25,872/- in December 2017 and issued a cancellation notice in 2020,



despite their repeated requests for clarification regarding the account and transfer of ownership.

19. The respondent argues that the complainants consistently failed to respond to offer of possession or make the required payments, leading to the cancellation of the allotment in 2020. Additionally, the counsel for the respondent during the proceedings dated 16.01.2025 submitted that demand for an amount of Rs.17,00,000/- was raised along with offer of possession towards increase in area of the subject unit and cancellation was justified due to the complainants' failure to make payments and take possession, despite repeated opportunities provided by the respondent.
20. The respondent further during proceedings dated 27.03.2025 submitted that third-party rights had already been created against the subject unit post cancellation and no other unit is available. Thereupon the counsel for complainants submitted that they are ready to accept the full refund if no unit is available with the respondent.
21. The foremost question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid or not in the eyes of law?"
22. The Authority finds the cancellation by the respondent to be unfair and invalid for several reasons. Firstly, by the time the allotment was cancelled, the complainants had already paid Rs.80,16,520/- which is more than the agreed basic sale price of Rs.72,90,000/-. Also, as per the agreed payment plan in BBA executed between the parties the total sale consideration of the subject unit is mentioned to be Rs.83,86,300/-. So, the demand for an additional Rs.17,25,872/- on offer of possession was unreasonable. On the other hand, as alleged by the respondent increase in price of the subject unit was due to the increase in area. If the same is taken into consideration, the additional demands



accompanied with offer of possession with regard to HVAT, High Side Electrification Charges on Pro-rata basis, Running Maintenance Charges and Electricity & Water Charges Deposit are unjustified as no proper details for the same or justification was ever made to the complainants.

23. Secondly, the respondent didn't properly adjust or explain the delay interest to the complainants. Furthermore, after the death of original allottee the respondent failed to provide details for transfer of property in the name of legal heirs despite the complainants repeated requests.
24. In light of the above observations, the cancellation of the subject unit is held to unjustified and uncalled for being bad in eyes of law.
25. Further, upon perusal of the record, the Authority also finds that conveyance deeds for Unit No. B-111 and B-161 were executed on 16.02.2023 and 29.02.2024 respectively after the filing of the present complaints. At no point during the proceedings did the respondent disclose to the complainants or the Authority that conveyance deeds were being executed in favour of third parties. This omission of material facts clearly reflects bad faith on the part of the respondent.
26. Lastly, the Authority notes that after cancellation of the allotment, the respondent failed to refund the amount paid by the complainants. In fact, the respondent continues to enjoy the benefit of the complainants' funds while reselling the units at significantly higher prices, as evidenced by the conveyance deed values of Rs.1,24,95,950/- for Unit no. B-111 and Rs.1,00,01,850/- for Unit no. B-161. This amounts to deriving unlawful gains from two different parties for the same units and clearly constitutes an unfair trade practice.
27. As already observed above, the respondent has created third-party rights in the subject unit by executing a conveyance deed. Therefore, the subject unit cannot



be reinstated. Accordingly, the respondent is liable to offer an alternative similarly situated unit of the same size to the complainants at the same rate, in accordance with the agreed terms of the Agreement dated 22.04.2013.

28. **Admissibility of delay possession charges at prescribed rate of interest:** 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.*

29. The legislature in its wisdom in the subordinate legislation under the 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.
30. 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., **27.03.2025** is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
31. The definition of term 'interest' as defined under section 2(z) 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;"*

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

33. 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. The builder buyer agreement dated 22.04.2013 was executed between the parties. As per Clause 11 of the agreement, possession of the subject unit was to be delivered within 36 months from the date of commencement of construction, along with a grace period of six months. Accordingly, the due date for handing over possession was 25.03.2017. However, the respondent offered possession only on 06.12.2017, which was beyond the agreed timeline and, subsequently, the unit was cancelled in the year 2020 and 2022. As previously elaborated, the said cancellation was found to issued in bad faith. Therefore, it stands established that the respondent/promoter failed to fulfil its contractual obligations as per the agreement by not delivering timely possession.

34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled for delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. due date of possession i.e., 25.03.2017 till actual handing over of possession or offer of possession plus two months of the alternative unit, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules
35. Another issue requiring adjudication relates to the submissions made by the respondent during the proceedings held on 27.03.2025. During the hearing, the respondent informed the Authority that third party rights have already been created against the subject units and and that no alternative unit is available with the respondent. In response the counsel for complainants submitted that the complainants are ready to accept the full refund of the paid-up amount along with interest if no other unit is available.
36. As observed from the submissions made by both parties, the complainants have expressed their willingness to accept a refund of the paid-up amount as provided under Section 18(1) of the Act, due to the promoter's failure to hand over possession of the subject units and the unavailability of any alternative unit. 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. -***

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

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest***



*at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

***(Emphasis supplied)***

37. In view of the above findings cancellation issued being bad and unjustified for the reasons already elaborated above and in absence of offer of any alternative similar unit the allottees become entitled to exercise their right under Section 18(1) and 19(4) to claim refund of the amount paid, along with interest at the prescribed rate, from the promoter, as the promoter has failed to hand over possession of the allotted unit or any alternative similar unit in accordance with the terms of the agreement for sale. In event of the unavailability of any similar alternative unit, the respondent is directed to refund the amount received by it against both the units along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the rules *ibid*.

**G. II. Direct the respondent to pay Rs.1,00,000/- for mental harassment, trauma mental inconvenience caused to the complainants**

38. The complainants are also seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357)*, 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

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

39. Hence, the authority hereby passes this order and issues 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 issued being bad in the eyes of law is hereby set aside. The respondent is liable to offer the possession an alternative and similarly situated unit as per specifications of original BBA dated 22.04.2013 at the same rate at which the unit was earlier purchased as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10 % p.a. w.e.f. due date of possession i.e., 25.03.2017 till actual handing over of possession or offer of possession plus two months, whichever is earlier, 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 due date of possession till the date of this order shall be paid by the promoter to the allottee within a



period of 90 days from date of this order and interest for every month of delay shall be paid by the respondent-promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

iv. In case of non-availability of any other similar unit the respondent/promoter is directed to refund the amount received by it from the complainant(s) along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment made till the actual date of refund of the deposited amount within a period of 90 days failing which legal consequences would follow.

40. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

41. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.

42. Files be consigned to registry.

**Dated:27.03.2025**

  
**(Vijay Kumar Goyal)**  
**Member**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram