



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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

Date of Decision: 28.04.2025

Name of the Builder		M/s Gnex Realtech Pvt. Ltd.		
Project Name		Asha Bahadurgarh, Phase I		
Sr. no.	Complaint no.	Title of the case	Appearance on behalf of complainant	Appearance on behalf of respondent
1.	2042/2022	<p>Arvind Kumar Tyagi and another SCO-52, Block-B, 4<sup>th</sup> floor, CCC, VIP Road, Zirakpur</p> <p>Vs.</p> <p>1. M/s Gnex Realtech Pvt. Ltd. B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.1</p> <p>2. Essel Housing and Infrastructure Development Ltd. 135, Continental building, Dr. A.B. Road, Worli, Mumbai, Maharashtra, through its Managing Director. ....Respondent no.2</p>	Adv. Kamal Dahiya, counsel for the complainants.	<p>Adv. Viren Sibel, through VC and Adv. Akshay Gupta, Counsel for the respondent no.1.</p> <p>None present for respondent no.2.</p>

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2.	2043/2022	<p><b>Anand Rohilla and Vikram Singh Kokkhar</b></p> <p>Vs.</p> <p><b>1.M/s Gnex Realtech Pvt. Ltd.</b> B-10, Lawrence Road, Industrial Area, Delhi. .....Respondent no.1</p> <p><b>2. Essel Housing and Infrastructure Development Ltd.</b> 135, Continental building, Dr. A.B. Road, Worli, Mumbai, Maharashtra, through its Managing Director. .....Respondent no.2</p>	<p>Adv. Kamal Dahiya, counsel for the complainants.</p>	<p>Adv. Viren Sibel, through VC and Adv. Akshay Gupta, Counsel for the respondent no.1.</p> <p>None present for respondent no.2.</p>
3.	2104/2022	<p><b>Mrs. Neeraj W/o Navin Jindal</b> Resident of H.No. 74, Near Community Centre, Scetor-6, Bahadurgarh, Jhajjar, Haryana- 124507</p> <p><b>Mrs. Neha Singhal , W/o Deepak Singhal</b> R/O C-1/11, 3<sup>rd</sup> floor, West Enclave, Pitampura, North West Delhi, Delhi-110034.</p> <p>Vs.</p> <p><b>1. M/s Gnex Realtech Pvt. Ltd.</b> B-10, Lawrence Road, Industrial Area, Delhi. .....Respondent no.1</p> <p><b>2. M/s Renu Realtech Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road,</p>	<p>Adv. Kamal Dahiya, counsel for the complainants.</p>	<p>Adv. Viren Sibel, through VC and Adv. Akshay Gupta, Counsel for the respondents.</p>

		<p>Industrial Area, Delhi. ....Respondent no.2</p> <p><b>3. M/s Gnex Projects Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.3</p> <p><b>4. M/s Gnex Infrabuild Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.4</p> <p><b>5. M/s Gnex Buidtech Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.5</p>		
4.	2108/2022	<p><b>Mrs. Sangeeta Sharma</b> R/o Jahangirpur(265), Jhajjar, Haryana-124104.</p> <p>Vs.</p> <p><b>1. M/s Gnex Realtech Pvt. Ltd.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.1</p> <p><b>2. M/s Renu Realtech Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.2</p>	<p>Adv. Kamal Dahiya, counsel for the complainants.</p>	<p>Adv. Viren Sibel, through VC and Adv. Akshay Gupta, Counsel for the respondents. None present for respondent no.6</p>

		<p><b>3. M/s Gnex Projects Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.3</p> <p><b>4. M/s Gnex Infrabuild Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.4</p> <p><b>5. M/s Gnex Buidtech Pvt. Ltd. through its managing Director.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.5</p> <p><b>6. Essel Housing and Infrastructure Development Ltd.</b> 135, Continental building, Dr. A.B. Road, Worli, Mumbai, Maharashtra, through its managing Director. ....Respondent no.6</p>		
5.	2155/2022	<p><b>Rajender Kumar, S/o Sh. Jogi Ram,</b> R/o Village Kheri Safa, P.O. Kharkbhura, Distrcit Jind, Haryana 126115. <b>Mrs. Sunita Devi, W/o Rajender Kumar,</b> R/o Village Kheri Safa, P.O. Kharkbhura, Distrcit Jind, Haryana 126115</p> <p>Vs.</p>	Adv. Kamal Dahiya, counsel for the complainants.	Adv. Viren Sibel, through VC and Adv. Akshay Gupta, Counsel for the respondents.



		<b>1.M/s Gnex Realtech Pvt. Ltd.</b> B-10, Lawrence Road, Industrial Area, Delhi. ....Respondent no.1		
		<b>2. Essel Housing and Infrastructure Development Ltd.</b> 135, Continental building, Dr. A.B. Road, Worli, Mumbai, Maharashtra, through its Managing Director. ....Respondent no.2		

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

**Member**  
**Member**

**ORDER (NADIM AKHTAR-MEMBER)**

1. This order shall dispose off all the above captioned five complaints filed by the complainants before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA, 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.



2. The core issues emanating from the above captioned complaints are similar in nature. The complainant in the above referred Complaint No. 2042 of 2022 and all other captioned complaints are allottees of the project namely; "Asha Bahadurgarh, Phase I" being developed by the same respondent/ promoter, i.e., M/s Gnex Realtech Pvt. Ltd. As such the issue involved in all the above captioned cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and all complainant(s) are now seeking mainly possession with delay interest. This order is passed taking complaint no. 2042 of 2022 titled as Arvind Kumar Tyagi and another Pvt Ltd vs M/s Gnex Realtech Pvt. Ltd and another as a lead case.

### **Project- Asha Bahadurgarh, Phase I**

Relevant provisions relating to possession of the plot/villa in Agreement for Sale:

#### **8.1. Schedule for possession of the Plot:**

*The Company agrees and understands that timely delivery of possession of the Unit for residential usage to the Allottee as provided under Rule 2(1)(f) of the said Rules, is the essence of this Agreement.*

*The Company assures to hand over possession of the Villa for residential usage as detailed in Schedule E of this Agreement unless there is delay due to Force Majeure, Court orders, Government policy/ guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Villa for residential usage.*

#### **SCHEDULE "E" DETAILS OF TIMELINES FOR HANDING OVER THE POSSESSION OF THE UNIT:**

*The Company shall make all efforts to complete the development and handover the possession of the said Villa within twenty four (24) months plus six (06) months grace period from the date of signing of this Agreement subject to Force Majeure, Court orders, Government policy/guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh project. If, the completion*



of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Villa for residential usage.

The details of the complaints, unit no., date of builder buyer agreement, deemed date of possession and total sale consideration and amount paid by the complainant, offer of possession and relief sought are given in the table below:

Sr no	Complaint no. /Date of filing	Reply Status	Unit no. and area	Date of BBA and deemed date of possession	Total sale consideration of Villa (TSC) as per agreement and Paid amount	Offer of possession given or not given	Relief sought
1.	2042/2022 17.08.2022	Filed on 09.03.2022	Villa no. A-058, 1050 sq.ft	01.12.2017  DDOP 01.12.2019	TSC: ₹39,50,000/- Paid amount: ₹10,97,606/-  Outstanding amount ₹8,12,970/- as per respondent application dated 17.01.2025  Calculations admitted by both the parties.	Given on 27.09.2024	Respondent be directed to handover physical possession of the villa allotted to the complainant with delay interest. OR To direct the respondents to offer residential plot/plots, in case the completion of villa is not possible, at the price that was fixed for plots in the year 2017, with interest for every month of delay till the handing over of the possession of the plot.
2.	2043/2022 17.08.202	Filed on 09.03.2023	Villa no. A-017, 1050 sq.ft	01.12.2017 between original allottee and respondent.  DDOP 01.12.2019	TSC: ₹39,50,000/- Paid amount: ₹16,49,440/- and ₹61950/- transfer charges. Total paid amount 17,11,390/- As per receipts on record.  Outstanding	Given on 01.10.2024	Respondent be directed to handover physical possession of the villa allotted to the complainants with delay interest. OR To direct the respondents to offer residential plot/plots, in case the completion of



					amount ₹2,64,168/- as per respondent application dated 17.01.2025		villa is not possible, at the price that was fixed for plots in the year 2017, with interest for every month of delay till the handing over of the possession of the plot.
3.	<b>2104/2022</b> 17.08.2022	Filed on 09.03.2023	Villa no. A-234, 1050 sq.ft	05.10.2018  DDOP 05.10.2020  After relaxation of covid-19 period 05.07.2021	TSC: ₹40,30,000/- Paid amount: ₹16,80,014/-/-  Outstanding amount 2,30,556/- as per respondent application dated 17.01.2025  Calculations admitted by both the parties.	Given on 27.09.2024	Respondents be directed to handover physical possession of the villa allotted to the complainants with delay interest.  OR To direct the respondents to offer residential plot/plots, in case the completion of villa is not possible, at the price that was fixed for plots in the year 2017, with interest for every month of delay till the handing over of the possession of the plot.
4.	<b>2108/2022</b> 17.08.2022	Filed on 09.03.2023	Villa no. A-136, 1050 sq.ft	Original allotte and respondent on 19.11.2018  DDOP 19.11.2020  After relaxation of covid-19 period 19.08.2021	TSC: ₹40,30,000/- Paid amount: ₹16,80,008/-  Outstanding amount 2,30,568/- as per respondent application dated 17.01.2025	Given on 01.10.2024	Respondent be directed to handover physical possession of the villa allotted to the complainant with delay interest.  OR To direct the respondents to offer residential plot/plots, in case the completion of villa is not possible, at the price that was fixed for plots in the year 2017, with interest for every month of delay till the handing over of the possession of the plot.

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5.	2155/2022 17.08.2022	Filed on 09.03.2023	Villa no. B-039, 1050 sq.ft	Original allotte and respondent on 12.02.2018  DDOP 12.02.2020	TSC: ₹41,50,000/-  Paid amount: ₹11,53,606/-  Outstanding amount ₹7,56,970/- per respondent application dated 17.01.2025	Given on 27.09.2024	Respondent be directed to handover physical possession of the villa allotted to the complainants with delay interest.  OR To direct the respondents to offer residential plot/plots, in case the completion of villa is not possible, at the price that was fixed for plots in the year 2017, with interest for every month of delay till the handing over of the possession of the plot.

## B. BRIEF FACTS OF THE COMPLAINT NO. 2042 OF 2022.

4. Following submissions are made by the complainants:

- (i) Facts of the present case pertain to the respondent promoter's project under the name and style of, "ASHA Bahadurgarh Phase-I" situated at Sector-36, Bypass- Road, Bahadurgarh Distt- Jhajjar, Haryana.
- (ii) That the complainants appointed Essel Housing & Infrastructure Development Pvt. Ltd. as their authorised purchasing agent for booking a suitable constructed/to-be-constructed villa in Bahadurgarh, Haryana. An amount of ₹2,00,000/- was paid to the said agent as a security deposit, to be disbursed to the seller of the villa on behalf of

the complainants. A copy of the letter of appointment of the agency, dated 28.03.2017, is annexed herewith as Annexure C-1.

(iii) That the complainant booked a villa bearing No. A-058, having a carpet area of 1050 sq. ft.. An amount of ₹4,39,040/- was paid by the complainants as booking amount, which was duly acknowledged by respondent no. 1 by way of a credit note dated 10.11.2017 for ₹2,00,000/- and receipt no. ABP1/REC/00004 dated 14.11.2017 for ₹2,39,040/-. The respondents assured that the said amount would be adjusted against the total sale consideration payable to respondent no. 1.

(iv) Subsequently, the complainants were issued an Allotment Letter dated 01.12.2017, whereby Unit No. A-058, Phase-I, admeasuring 1050 sq. ft. (carpet area), Unit Type – Duplex Villa, was allotted to them. A payment plan was enclosed with the letter, reflecting the total sale consideration as ₹39,50,000/-. That the complainants complied with the terms of the allotment and did not commit any default in payment. A copy of the Allotment Letter dated 01.12.2017 is annexed herewith as Annexure C-2.

(v) That the complainants executed an Agreement for Sale with the respondent no.1 on the same day, i.e., 01.12.2017. That the terms and conditions contained in the said agreement are arbitrary, one-sided, and heavily skewed in favour of the respondents. A copy of the



Agreement for Sale dated 01.12.2017 is annexed as Annexure C-3. Further, the said agreement was registered before the Sub- Registrar, Bahadurgarh on 16.02.2018. Copy of the registration of agreement is annexed as Annexure C-4.

(vi) That as per Clause-G of the Agreement for Sale, the project of the respondents is a registered project under the Haryana Real Estate (Regulation and Development) Act, 2016, and therefore all provisions of the said Act are applicable to it. Accordingly, the construction was mandatorily required to be carried out in accordance with the approved layout plans and sanctioned drawings. However, the respondents deviated from the sanctioned plans and made unauthorized changes in the project, thereby violating Section 14 of the Act. Copies of the approved layout plan, master plan, and brochures of the project are annexed as Annexure C-5.

(vii) That the respondents enclosed a construction linked payment plan with the agreement wherein the respondents kept demanding the instalments irrespective of the progress of the construction and such action falls under criminal liability of fraud and cheating.

(viii) That the complainants had paid an amount of ₹4,39,040/- till 10.11.2017, towards the price of the said unit to the respondent no.1 which is more than 11% of the cost of the Villa/ unit before executing any written agreement between the parties which is violation of





section 13(1) of the Act. Further, as per the agreement, the respondent no.1 was to give the possession of the allotted unit within 24 months plus 6 months grace period from the date of the signing/ execution of the said agreement, i.e., till 01.06.2020. However, no valid offer of possession was made to the complainants till date.

- (ix) That the complainants made several efforts from 2018 to 2022 by sending emails to the respondents regarding the non-completion of construction of the allotted villa; however, the respondent no.1 failed to respond. It is further contended that the complainants have paid a substantial amount of ₹10,97,606/- towards the said villa. Despite repeated requests and payment of a considerable sum, the respondents neither completed the construction nor furnished any reply or assurance to the complainants.
- (x) That it was vide an email dated 09.07.2022 that the respondents informed the complainants that the respondents are incapable of handing over possession of the allotted villa to the complainants and are not able to complete the construction of the villa due to unforeseen circumstances. Further, the respondents made an offer to convert the allotted villa into a residential plot at a discounted rate and such an offer was made to the complainants on a condition that the offer is valid till 31.08.2021 only. Copy of the email dated 09.07.2021 is annexed as Annexure C-7.



- (xi) That the complainants had clearly intimated to the respondents that they are only interested in taking possession of the allotted unit as per the terms and conditions of the agreement to sell. The complainants further objected to the offer of converting the villa into a plot at the current market rate, contending that the applicable price should be the rate prevailing at the time of booking of the villa. However, this request was not acceded to by the respondents. A copy of the price list of plots as prevailing in 2017 is annexed as Annexure C-8.
- (xii) That the respondents have failed to adhere to the contractual obligations as stipulated in the agreement and is thus in breach thereof. The cause of action is continuous, as despite receipt of a substantial amount of consideration and the lapse of nearly four years since the date of booking, the respondent has failed to hand over possession of the allotted unit. In view of the same, the complainants are entitled to seek relief under Section 18 of the Real Estate (Regulation and Development) Act, 2016, including interest for the delay in possession.
- (xiii) Therefore, being aggrieved by the conduct of the respondents, complainants have filed the present complaint before this Hon'ble Authority for seeking the reliefs as prayed under.



### C. RELIEFS SOUGHT

3. The complainant in her complaint has sought following reliefs:

- (i) To give necessary directions to the respondents to handover physical possession of the villa allotted to the complainant, complete in all respect, with interest for every month of delay till the handing over of the possession of the said villa.
- (ii) To direct the respondents to offer residential plot/plots, in case the completion of villa is not possible, at the price that was fixed for plots in the year 2017, with interest for every month of delay till the handing over of the possession of the plot.
- (iii) To impose penalty upon the respondents as per the provisions of Section 60 of RE(R&D) Act for wilful default committed by them.
- (iv) To impose penalty upon the respondents as per the provisions of Section 61 and Section 64 of RE(R&D) Act for contravention of Sec. 12, 13, Sec. 14 and Sec. 16 of RE(R&D) Act.
- (v) To issue directions to make liable every officer concerned, i.e., Director, Manager, Secretary, or any other officer of the respondents company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RE(R&D) Act, 2016 to be read with HRERA Rules, 2017.





- (vi) To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420, 406 and 409 of the Indian Penal Code.
- (vii) To issue directions to pay Rs.5 Lakh compensation for mental and physical harassment.
- (viii) To issue direction to pay the cost of litigation.
- (ix) Any other relief which this Hon'ble Authority deems fit and appropriate in view of the facts and circumstances of this complaint.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO.1**

4. Following submissions are made by the respondent no.1 in its reply dated 09.03.2023 are as follows:

- (i) That respondent no.1 has raised a preliminary objection to the maintainability of the present complaint, submitting that it is liable to be dismissed on the ground of lack of jurisdiction. It is contended that the Builder Buyer Agreement (BBA), which is also annexed by the complainants, contains a binding arbitration clause. The respondent asserts that it is willing to resolve the matter amicably through mutual discussions, failing which the dispute ought to be referred to arbitration in accordance with the terms and conditions agreed upon by the parties in the BBA. On this basis, the respondent



submits that this Hon'ble Authority lacks the jurisdiction to entertain and adjudicate the present complaint.

- (ii) That the decision not to construct the villa was necessitated by unforeseen circumstances that were entirely beyond its control. In light of the same, the complainants were offered the option either to convert the booked villa into a plot or to seek a refund of the amount paid. However, the complainants did not exercise either of the options at the relevant time and have now chosen to raise a grievance, subsequent to the grant of the completion certificate for the project in favour of respondent no. 1. A copy of the said completion certificate dated 02.01.2023 is annexed as Annexure A-1 (Colly).
- (iii) That the complainants themselves are in default for not making timely payments, which is the essence and a fundamental obligation under the terms of the Buyer's Agreement.
- (iv) The respondents categorically deny having committed any default or breach of the provisions of the Real Estate (Regulation and Development) Act, 2016, or any terms of the agreement executed between the parties.
- (v) That the period of completion of construction as per the agreement was subject to the condition of timely payments by the complainants and other allottees of the project and also subject to



conditions including force majeure and other restraint/ restrictions from the authorities break in supply chain of construction material etc. and thus, non-payment of instalments by various allottees including the complainants jeopardised the efforts of the respondent no.1 for completing the construction of the said project within tentative time frame given.

(vi) That the respondent no.1 further submits that the present complaint is premature and therefore, not maintainable at this stage. It is contended that no cause has arisen warranting intervention or inquiry by this Hon'ble Authority.

(vii) That the respondent no.1 has not violated any provisions of the Act, as a substantial majority of the allottees have already opted to convert their villas into residential plots. That out of approximately 82 allottees of villas, 70 allottees have given their consent for conversion, thereby constituting over 85% consent. As per the provisions of the Real Estate (Regulation and Development) Act, such a change is permissible when the majority of allottees have consented to the proposed modification. The contents of paragraph 8 of the complaint are admitted only to the extent that the respondents' project "ASHA BAHADURGARH" is a registered project under the Haryana Real Estate (Regulation and Development) Act, and all provisions of the RERA Act are





applicable to it. However, it is denied that the respondents deviated from the approved plans or carried out any unauthorised changes in the project. The decision not to construct the villas was taken due to unforeseen circumstances, which were beyond the control of the respondent.

- (viii) That the complainants were duly offered the option either to convert their proposed villa into a residential plot or to seek a refund of the amount paid. However, despite being informed by the respondent that the construction of villas was not feasible, the complainants willfully chose not to avail either of the alternate remedies offered to them at the relevant time.
- (ix) That the complainants have approached this Authority only after becoming aware that the completion certificate for the project has been obtained. They had previously remained silent when the option to convert the villa into a plot or seek a refund was offered. It appears that the complainants are inclined to accept the conversion but are attempting to negotiate the price on unreasonable terms. That the cost of construction and land has increased substantially since the time of the original offer, and therefore, it is not feasible to extend the same offer at the earlier rate. Notably, a majority of allottees have already opted for conversion from villa to plot at the



prevailing market value, which was considered reasonable. The complainants, however, chose not to do so at the relevant time.

- (x) That the respondent no.1 has not wrongfully accepted the payment to the tune of Rs. 10,97,606/- from the complainants.
- (xi) Thus, the respondent no.1 asserts that the present complaint is based on false and baseless allegations, and the complainants are not liable to relief sought.

#### **E. APPLICATIONS FILED BY RESPONDENT NO.1**

- 5. Written Statements dated 18.10.2024 filed by the respondent no.1 in all the complaints in which respondent has made following submissions:
  - (i) Respondent no.1 is ready to handover possession of the residential plot to the complainants at the price prevalent in the year 2017 and accordingly agreed to adjust the payments already made by the complainants.
  - (ii) That vide order dated 01.07.2024, Authority directed the respondent no.1 to offer possession of the residential plot to the complainants and accordingly respondent no.1 has issued offer of possession letters dated 27.09.2024 and 1.10.2024 to the complainants requesting them to remit the payments against the total sale consideration of the residential plot/unit calculated at the BSP of ₹17000/- per Sq. Yards and get the conveyance deed of the said plot executed and registered in their



favour. A copy of offer of possession letter alongwith documents is annexed as Annexure A.

- (iii) Complainants have alleged that respondent has committed the unfair trade practice by entering into the agreement for sale of residential villa with complainants without allegedly having license granted in its favour for development of villa. In reply to false and frivolous contentions raised by the complainants the respondent made the verbal submissions before the Authority during the course of hearing on 01.07.2024.

6. An application dated 17.01.2025 has been filed by the respondent no.1 mentioning the payments details of the complainants, including total sale consideration of the residential plot, outstanding dues on part of complainant and amount paid by the complainants.

7. Applications dated 24.01.2025 and 28.04.2025 were filed by the respondents in complaint no. 2104 of 2022, in reply to the suo motu notice issued by the Authority on 25.09.2024.

8. No reply has been filed by the other respondent(s) despite availing number of opportunities and hence their defence is struck off.

#### **F. ARGUMENTS OF LEARNED COUNSELS FOR COMPLAINANT AND RESPONDENTS**

9. Ld. counsel for complainants made following submissions:

- (i) Ld counsel for complainants stated that he agrees with the paid amount mentioned by the respondent no.1, in complaint no.





2042/2022, 2104 of 2022 but disagrees with the paid amount in complaint no.2043/2022, 2108/2022 and he has no instructions with respect to complaint no. 2155 of 2023.

(ii) In complaint no. 2043 of 2022, he stated that complainants had paid an amount of ₹17,11,390/- instead of 16,49,440/-. Respondent has not included the transfer charges of ₹61,950/-.

(iii) In complaint no. 2108 of 2022, ld counsel for complainant stated that complainant had paid an amount of ₹ 18,03,908/- instead of 16,80,008/-. Respondent has not included the transfer charges of ₹1,23,900/-.

(iv) Ld. complainants counsel further stated that he disagrees with the total sale consideration of the plot mentioned by the respondent and referred to the orders passed by this Hon'ble Authority in complaint no. 1356 of 2021 titled as Vanita Singhal and Sanjay Singhal v. Gnex Realtech Pvt. Ltd where complainants had booked a plot measuring 116 sq. yards in the same project of the respondent company in the year 2017 and total sale consideration of the plot was ₹15,66,000/- inclusive of all taxes. The said consideration of amount was not disputed by the respondent. Therefore, in present complaints also, total sale consideration be taken as ₹15,66,000/- inclusive of all taxes as the said villas of complainants were to be constructed on 116 sq. yards. plots.



(v) Ld. complainants counsel further submitted that in complaint no. 1356 of 2021, Authority took deemed date for handing over of possession as 24 months from the date of execution of agreement. The same period may also be considered in present complaints because earlier respondent promised to hand over possession of villa and for that deemed date was 24+6 months from date of execution of agreement, however, respondent failed to deliver possession of villa and now ready to deliver plots to the complainant. As it is a known fact that construction of villa takes more time than offer of developed plot, therefore, respondent should not be granted grace period of 6 months and deemed date for handing over of plots be taken as 24 months from the date of execution of builder buyer agreement.

(vi) He further, stated that strict action must be taken against the respondents, as respondents have failed to state the reasons for selling the Villas in the year 2017, 2018, 2019, 2020 and got registered the Agreement of Villas under Registration Act, 1908 without having approval of such villas or license of such villas. That respondent no.1 applied for registration of plots before the RERA Authority, however, he promised complainants to deliver the possession of villas and later on, respondent no.1 converted the villas into residential plots and that too without the consent of



allottees. Further, respondent offered plots to the complainants instead of villas which shows malafide intent on the behalf of respondents and a clear violation of section 14 of RERA as respondent no.1 failed to obtain prior consent from the allottees/complainants. Also, respondents committed fraud not only with the allottees but also with the RERA Authority as respondents obtained Registration no. 365 of 2017 dated 22.11.2017 from RERA for plots and with the same registration, respondents sold villas to the allottees without obtaining permission from Department of Town and Country Planning as well as from RERA, Panchkula. It is pertinent to mention that vide order dated 22.04.2024, Authority decided to initiate a suo moto complaint against the respondents in project section to take the necessary actions against the respondents. In this regard, Ld counsel for complainants stated that his submissions dated 26.09.2023 filed in complaint no. 834 of 2021 be taken on record and necessary action may be taken against the respondent.

(vii) Further, he submitted that he has no instructions with regard to complaint no. 2155 of 2022.

10.Ld counsel for respondent no.1 stated that the complaint no. 1356 of 2021 referred by Ld. complainants counsel for parity in total sale consideration relates to different phase as said plot is located in





Phase III of the project Asha Bahadurgarh whereas the present complaints relates to phase I. He further submitted that phase III scheme was for employees only. That's why there is difference in sale consideration. As regards difference in total paid amount calculations, he stated that amount of transfer charges is not included in total sale consideration and disputed with the submissions made by Ld. complainants counsel in complaint no. 2043 and 2108 of 2022.

#### **F. ISSUES FOR ADJUDICATION**

11. Whether the complainants are entitled to possession of plot at 2017 rate alongwith delay interest in terms of Section 18 of RERA Act of 2016?

#### **G. OBSERVATIONS AND DECISION OF THE AUTHORITY**

12. Respondent no.1 has taken a plea in preliminary objections to the maintainability of the present complaint, submitting that it is liable to be dismissed on the ground of lack of jurisdiction. That the Builder Buyer Agreement (BBA), contains a binding arbitration clause and both the parties are bound by the said clause. Therefore, this Hon'ble Authority lacks the jurisdiction to entertain and adjudicate the present complaint. With regard to the above issue, the Authority is of the opinion that jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the agreement as it may be noted



that section-79 of the RERA Act, 2016 bars the jurisdiction of civil courts about any matter which falls within the purview of this Authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the RERA Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly on *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy and Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the Authority would not be bound to refer parties to Arbitration even if the agreement between the parties had an arbitration clause.

13. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and*



*Development) Act, 2016 (for short the Real Estate Act"), Section 79 of the said Act reads as follows-*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra) the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act*

*.....*  
*56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated land of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section B of the Arbitration Act."*

While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the application form, the Hon'ble Supreme Court in case titled as *M/s*





*Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017* decided on 10.12.2018 has upheld the aforesaid judgement of NCDRC. As provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the Authority is bound by the aforesaid view. The relevant para of the judgment passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength of an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

Furthermore, Delhi High Court in 2022 in *Priyanka Taksh Sood V. Sunworld Residency*, 2022 SCC OnLine Del 4717 examined



provisions that are "Pari Materia" to section 89 of RERA Act; e.g. S. 60 of Competition Act, S. 81 of IT Act, IBC, etc, it held *"there is no doubt in the mind of this court that giving a purposive interpretation to sections 79, 88 and 89 of the RERA Act, there is no bar under the RERA Act from application of concurrent remedy under the Arbitration & Conciliation Act, and thus, there is no clash between the provisions of the RERA Act and the Arbitration & Conciliation Act, as the remedies available under the former are in addition to, and not in supersession of, the remedies available under the Arbitration & Conciliation Act."*

Remedies that are given to allottees of flats/apartments/plots are therefore concurrent remedies, such allottees of flats/apartments/plots being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.

Therefore, in view of the above judgments and considering the provisions of the Act, the Authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Real Estate (Regulation and Development) Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not required to be referred to arbitration necessarily. In the light of the



above-mentioned reasons, the Authority is of the view that the said objection of the respondent stands rejected.

14. **On merits:** In light of the facts of the case and perusal of document placed on record, Authority observes that admittedly complainants booked a villa in the project of respondent no.1 namely; 'ASHA Bahadurgarh Phase-I' at Sector-36, Bahadurgarh Distt- Jhajjar, Haryana-124507. Complainants were issued allotment letter dated 01.12.2017 whereby complainants were allotted Villa no. A-058, Phase-I, ad-measuring carpet area 1050 sq. ft. in said project. Consequently, agreement for sale was executed with respect to the said villa on 01.12.2017. Till date complainants have paid an amount of ₹10,97,606/- against the total sale consideration. Said amount is admitted by the respondent no.1 in its application dated 17.01.2025 and also not rebutted by the complainants during the arguments.

15. With regard to the deemed date of possession, Authority observes that agreement for sale was executed between the parties and both the parties are bound by said agreement. For deemed date of possession Authority cannot go beyond the terms and conditions of the agreement. Therefore, as per Schedule E of the agreement to sale dated 01.12.2017, possession of said villa was to be given within a period of 24 months from the date of execution of agreement to sale and respondent no.1 was under an obligation to handover possession





till 01.12.2019. The 6 months grace period is not being awarded to the respondent no.1 as respondent no.1 nowhere in its reply explained for what's reasons grace period is to be awarded. By simply stating that due to some unforeseen circumstances respondent no.1 was unable to handover the possession of the villa is not acceptable. Omission on the part of respondent no.1 undermines the credibility of the respondent's argument. Hence, grace period of 6 months is not being awarded to the respondent no.1. Till 01.12.2019, respondent no.1 did not hand over the possession of the villa/plot to the complainant.

16. In complaint no.2104 and 2108 of 2022, deemed date of possession comes to 05.10.2020 and 19.11.2020, i.e., during the Covid-19 period. In these complaints, Authority observes that due to Covid-19 Pandemic, nation-wide lockdown was imposed by the Central Government which caused reverse migration of labourers, break in supply chain of construction material etc. and thus, all the construction activities across the country came to a halt. Further, the Ministry of Housing and Urban Affairs issued an advisory for extension of registration of all real estate projects due to the force majeure event of Covid-19 pandemic for a period of six months w.e.f. March, 2020. In furtherance of the said advisory, all the RERA Authorities including the Haryana Real Estate Regulatory Authority, Panchkula granted general extension to all the real estate projects. The said extension was



further extended in the year 2021 for a period of three months due to the second wave of Covid-19 pandemic. As per HRERA notification dated 26.05.2020 and 02.08.2021, an extension of 9 months is granted for the projects having completion/due date on or after 25.03.2020. Therefore an extension of 9 months is to be given over and above the due date of handing over possession in view of above said notifications, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in both the complaints deemed date of possession comes to 05.07.2021 and 19.08.2021 respectively.

17. For better clarification, Deemed date of possession in all the complaints is calculated below:

Sr. no.	Complaint no.	Date of agreement to sale	Deemed date of possession as per Schedule E	Covid-19 exemption granted or not
1.	2042 of 2022	01.12.2017	01.12.2019	Not granted
2.	2043 of 2022	01.12.2017	01.12.2019	Not granted
3.	2104 of 2022	05.10.2018	05.10.2020	Granted and deemed date comes to 05.07.2021
4.	2108 of 2022	19.11.2018	19.11.2020	Granted and deemed date comes to 19.08.2021
5.	2155 of 2022	12.02.2018	12.02.2020	Not granted



18. With regard to sale consideration of plot, it is admitted fact that respondent no.1 was unable to handover the possession of the villa to the complainants and therefore, respondent no.1 offered complainants to either seek the refund of the paid amount or take possession of residential plot instead of villa. Earlier complainants wanted only possession of the villa and now complainants are themselves ready and willing to take the possession of the residential plot at the rate prevalent in the year 2017, as submitted in the reliefs clause as well and during the course of hearing also. During the course of hearings, respondent no.1 also admitted that respondent is ready to offer possession of residential plot at the rate prevalent in the year 2017. Respondent no.1 has submitted an application dated 17.01.2025 wherein respondent no.1 has mentioned the details of paid amount by the complainants, dues on part of complainants and total sale consideration of the plot. As per said application, total sale consideration of the plot is ₹19,10,576/-. However, said amount is not substantiated by any documentary proof as to how the said amount is arrived at. On the other hand, ld counsel for complainants stated that total sale consideration be taken as ₹15,66,000/- by referring to the order dated 12.08.2022 in complaint no. 1356 of 2021 of the





Authority. After hearing both the parties, Authority observes that vide order dated 12.08.2022 passed by the Authority in complaint no. 1356 of 2022 titled as Vanita Singhal & Sanjay Singhal v. Gnex Realtech Pvt. Ltd, respondent no.1 was allowed to give possession of plot admeasuring 116 sq. yards having total sale consideration of ₹15,66,000/-. In present complaint, respondent no.1 is ready to offer residential plot of same size as referred in order dated 12.08.2022 and agreed between the parties. Treating captioned complaint (1356 of 2022) at par with present complaints, Authority deems it appropriate to determine the total sale consideration of the plot of complainants as ₹15,66,000/- as the plot is located in the same project of the respondent, being developed in different phases only.

19. That respondent no.1 has received the completion certificate from the competent Authority on 02.01.2023 and in compliance of the orders of the Authority dated 01.07.2024, respondent no.1 has issued offer of possession letters dated 27.09.2024 and 01.10.2024 to the complainants as proved from application filed by respondent no.1 on 18.10.2024 in the Authority. Therefore said offer of possession of the plots is valid as per the provisions of law.

20. Details of payments and outstanding dues in all the complaint are mentioned below:



Sr. no.	Complaint no.	Paid amount as per respondent	Outstanding amount as per respondent	Admission of complainants	Observation of Authority
1.	2042 of 2022	₹10,97,606/-	₹8,12,970/-	Admit to the paid amount	Complainant is liable to pay an amount of ₹4,68,394/- with delayed payment interest as now total sale consideration is ₹15,66,000/-.
2.	2043 of 2022	₹16,49,440/-	₹264168/-	Disagrees to paid amount as respondent has not included the transfer amount	Agreement to sale was executed between the original allottee and respondent no.1. Complainant had purchased the villa from the original allottee and same was acknowledged by the respondent no.1 on payment of transfer charges of ₹61950/-. The transfer charges are not included in total sale consideration. Therefore paid amount is considered as ₹16,49,440/- as per receipts on record.
3.	2104 of 2022	₹16,80,014/-	₹230556/-	Admit to the paid amount	Complainant is not liable to pay any outstanding



					dues as complainant has already paid more than the total sale consideration of ₹15,66,000/-.
4.	2108 of 2022	₹16,80,008/-	₹230568/-	Disagrees to paid amount	Agreement to sale was executed between the original allottee and respondent no.1. Complainant had purchased the villa from the original allottee and same was acknowledged by the respondent no.1 on payment of transfer charges of ₹1,23,900/-. The transfer charges are not included in total sale consideration. Therefore paid amount is considered as ₹16,80,008/- as per receipts on record.
5.	2155 of 2022	₹11,53,606/-	₹756970/-	No rebuttal by complainant counsel	Complainant is liable to pay an amount of ₹4,12,394/- with delayed payment interest as now total sale consideration is ₹15,66,000/-.





21. Now only issue which remains to be adjudicated is that of outstanding dues and delay interest. As per section 18 of the RERA Act, 2016, if the promoter fails to complete or give possession of an apartment, plot or building in accordance with terms of agreement for sale or as the case may be, duly completed by the date specified therein, the allottee may demand the refund of amount paid and in case the allottee do not wish to withdraw from the project, then he shall be entitled to interest for every month of delay till handing over of possession. As of today, complainant-allottee wants to stay with the project and respondent has offered possession of plot on 27.09.2024 duly supported with completion certificate, i.e, after passing of deemed date of possession as already determined by the Authority in para 17 of this order.

22. Thus, the Authority finds it a fit case to allow delayed possession charges from the deemed date, i.e., 01.12.2019 till 27.09.2024 the date on which a valid offer is sent to the complainant 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”.*



23. 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-*

*(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;*

24. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date, i.e., 27.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

25. Payment of delayed possession charges at the prescribed rate of interest. Interest for every month of delay, till the handing over of possession at such rate, as 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".*

26. That complainant(s) are entitled for the delay interest from deemed date of possession till valid offer of possession at the rate of 11.10% as per detail given in the tables below:

Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 27.09.2024(valid offer of possession)
<b>Complaint no. 2042 of 2022</b>			
1.	₹10,97,606/-	01.12.2019	₹5,88,476/- However, complainants are liable to pay balance due amount of ₹4,68,394/- alongwith delayed payment interest.
<b>Complaint no. 2043 of 2022</b>			
2.	₹16,49,440/-	01.12.2019	₹8,86,346/- Respondent no.1 also is liable to refund the excess paid amount of ₹83,440/-. TOTAL AMOUNT= ₹9,69,786/-
<b>Complaint no. 2104 of 2022</b>			
3.	₹16,80,014/-	05.07.2021	₹6,03,383/- Respondent no.1 also is liable to refund the excess paid amount of ₹1,14,014/-. TOTAL AMOUNT= ₹7,17,397/-





Complaint no. 2108 of 2022			
4.	₹16,80,008/-	19.08.2021	₹5,82,433/- Respondent no.1 also is liable to refund the excess paid amount of ₹1,14,008/-. TOTAL AMOUNT= ₹6,96,441/-
Complaint no. 2155 of 2022			
5.	₹11,53,606/-	12.02.2020	₹5,92,890/- However, complainant is liable to pay balance due amount of ₹4,12,394/- alongwith delayed payment interest.

27.As in all the captioned complaints, complainants made all the payments before the deemed date of possession and no payment is made after deemed date of possession, accordingly, respondent is liable to pay the upfront delay interest as mentioned in above table to the complainants towards delay already caused in handing over the possession.

28.It is pertinent to mention that vide order dated 22.04.2024, Authority decides to initiate a suo moto complaint against the respondent in project section to take the necessary actions against the respondent. With regard to the same, instead of initiating suo moto complaint, a notice under section 35 of RERA Act of 2016 was first issued to the respondent on 25.09.2024 for seeking information relating to



construction of villas on 13 plots being developed in the affordable residential plotted colony namely "Asha Bahadurgarh" on land measuring 8.225 acres situated in Sector-36, Village Nuna Majra, Bahadurgarh. In regard to the notice, respondent has filed reply dated 28.04.2025, in complaint no. 2104 of 2022. Following submissions are made by the respondent.

- (i) *That the Department of Town & Country Planning, Haryana had issued License No. 95 of 2017 dated 09th November, 2017 in favor of the Respondent Company for development of a Residential Plotted Colony Project namely 'Asha Bahadurgarh Phase-II' consisting of a total number of 158 plots. Further, on the basis of the said License, the Respondent company got the said Project registered with the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula vide Registration Nos. 365/2017 dated 22.11.2017. In furtherance of the said License issued by the Department, the Respondent company started the development of the Residential Plotted Colony Project and after completion of the development work, the Department of Town & Country Planning, Haryana issued the Completion Certificate in favor of the Respondent with respect to the said project. In furtherance of the said Completion Certificate, the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula also issued the RERA Exemption*



*Letter in favor of the Respondent company for its Projects vide Letter bearing Dispatch No. 4168 dated 07.06.2023. A copy of the Completion Certificate issued by the Department of Town & Country Planning, Haryana for the project 'Asha Bahadurgarh Phase-II' is annexed herewith as ANNEXURE-A. Further, a copy of the Exemption Letter issued by the Hon'ble Haryana Real Estate Regulatory Authority, Panchkula is annexed herewith as ANNEXURE - B.*

*(ii) That in furtherance of the said License, the Respondent company approached the Department of Town & Country Planning, Haryana for construction of G+1 Floor Residential Villa Units upon certain plots in the said project of the Respondent. Accordingly, the Respondent submitted its Official Drawings for the said G+1 Floor Residential Villa units before the said Department and the same were duly approved by the Department. The copies of the Official Drawings duly signed and approved by the JD, ATP and DTP of the Department of Town & Country Planning, Haryana are annexed herewith as ANNEXURE-C.*

*(iii) That due to Covid 19 Pandemic and other Force Majeure factors including repeated ban on construction in NCR Region on account of increase in Pollution in Northern Region of our country, Farmers Protest etc., the development at the project site of the respondent*





*got stalled on numerous occasions and therefore, the respondent could not complete the construction of the said Villas., Thereupon, the Respondent requested all the allottees of such villa units to take 'Residential Plot' units at reduced prices so as to balance the transaction and timely deliver the units to the allottees without any further delay.*

*(iv) That there is no provision under The Haryana Development and Regulation of Urban Areas Act, 1975 for grant of separate License for Development of Residential Villa Project. Rather, the said Act has empowered the Department of Town & Country Planning, Haryana to grant only four categories of Licenses namely:*

- i. Residential Plotted Colony Project;*
- ii. Group Housing Project;*
- iii. Commercial Areas;*
- iv. Cyber City/Cyber Park*

*Apart from the aforementioned categories of Licenses, the Department of Town & Country Planning, Haryana is not authorized to grant any separate or specific License for any purpose whatsoever. That in case the law and procedure required a developer/promoter to apply for a separate License for development of Residential Villa from the Department of Town & Country*



*Planning, Haryana, then at the time when the Respondent submitted the Official Drawings for construction of Villa units, the Department of Town & Country Planning would have outrightly rejected the said drawing of the Respondent on the ground that a separate License is required to be applied for construction of such villas and the same cannot be constructed in a Residential Plotted Colony Project. However, no such objection was ever raised by any Official of the said Department as there is no such provision for issuance of separate License for development of Villas. The Official Drawings submitted by the Respondent before the Department clearly specify the License Number and the details of Residential Plots upon which the said Villas were proposed to be constructed and the same have been duly approved by the Department in accordance with the governing laws and regulations.*

- (v) That the Functions and Policies of the Department of Town & Country Planning, Haryana have been uploaded on the website of the said department which provides for the parameters for grant of Licenses by the said Department in the State of Haryana and the prescribed formats in which the application for grant of such Licenses are to be submitted. The said functions and policies nowhere provide for issuance of license for development/construction of residential villas exclusively.*



(vi) That admittedly, the said License for development of Residential Plotted Colony has been granted under the 'Deen Dayal Jan Awas Yojana - Affordable Plotted Housing Policy 2016 for Low & Medium Potential Towns' published under the provisions of Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975. In Clause 4 (e) of the said Policy, it has been clearly specified that the Maximum permissible FAR on Residential Plots of upto 150 Sq. Meters is 2.00 which clearly means that construction of G+1 floor units is permissible under the said scheme and no builder/developer can be prohibited from constructing units/floors upto a maximum FAR of 2.00 in the projects developed under the said Policy.

(vii) That the Respondent through its representative has also filed an application under the Right to Information Act, 2005 before the Department of Town & Country Planning, Haryana seeking certain information regarding grant of separate License for development of Villa units in a Residential Project. The said application is pending before the said Department and as soon as the said information is provided by the department, the same will further facilitate the adjudication of the dispute in question before this Hon'ble Authority in the present matter.





(viii) *That the Real Estate (Regulation and Development) Act, 2016 does not mandate that a Builder/Developer filing an Application for Registration of his Project with the Authority must have all the Sanctions/Approvals/NOC/Clearances at the time of filing the said application itself. From the date of grant of License for Development of a Project by the Town & Country Planning Department and till the date of grant of Completion Certificate for the Project by the said Department, there are numerous approvals, sanctions and clearances that are required to be sought by the Builder/Developer from different departments and authorities as and how the process of development of project moves ahead. Some of the said approvals and sanctions required to be taken after grant of License are as below:*

- i. Demarcation cum Zoning Plan;*
- ii. Service Plan Estimate;*
- iii. Consent to Establish (Pollution Control Board);*
- iv. No Objection Certificate from Forest & Fire Department;*
- v. Electricity Plan & Estimate (UHBVN & HVPNL);*
- vi. Other Miscellaneous approvals.*

*Every builder/developer intending to develop a Residential Plotted Colony project in the state of Haryana needs to seek all the aforementioned sanctions and approvals from various government*



bodies/departments after grant of License for the project in its favor. These approvals are to be taken before filing the application for grant of Completion Certificate before the Department of Town & Country Planning, Haryana and only after the Department is satisfied that the builder/developer has developed the project in consonance with the approvals and sanctions, the Completion Certificate for the project is granted in favor of the Developer.

(ix) Apart from the above, there are numerous approvals and sanctions which are required to be sought after grant of Completion Certificate by the Department of Town & Country Planning, Haryana, some of which are named as under:

- i. Water Connection;
- ii. Sewage Connection;
- iii. Storm Water Connection (HUDA);
- iv. Consent to Operate (Pollution Control Board).

The Real Estate (Regulation and Development) Act, 2016 itself provides that at the time of seeking registration of the project under the Act, the developer needs to submit a Declaration supported with an Affidavit stating that the developer shall take all the pending approvals on time from the competent authorities. That as per Section 14 of the Real Estate (Regulation and Development) Act, 2016, a Promoter is required to seek the prior written consent of



*2/3rd Allottees of a project in cases where the Promoter wishes to change the Sanctioned Layout Plan and specifications of the buildings or the commons areas within the project, however, in the present case, the Respondent has not changed the Layout Plans of the said Projects as no change in Layout Plan is required to be done for construction of Villas upon residential plot units and only Building Plan Approval is required for construction of such villa units.*

- (x) *That the Respondent Company informed this Hon'ble Authority that the Respondents are to construct certain G+1 Floor Villa units upon the said project of the Respondent bearing HRERA Regn. No. 365/2017 dated 22.11.2017. If a separate License or RERA registration is required for the development of a Project consisting of Villa units, this Hon'ble Authority would have objected to the Intimation letter filed by the Respondent. It is submitted that no such objection was ever raised by any department or authority as there is no such law/rule/regulation to seek separate License and RERA registration for development of a project consisting of Villa units. Villas can be constructed by a builder/developer in its Residential Plotted Colony project in the same manner as G+2 / G+4 floor constructions are done upon Plots after seeking Building*





*Plan Approval from the concerned Town & Country Planning Department.*

- (xi) *That the Exemption Letter issued by this Hon'ble Authority bearing Dispatch No. 4168 dated 07.06.2023 with respect to the project 'Asha Bahadurgarh Phase-II' clearly provides that all the necessary compliances with regard to the said projects have been done by the Promoter (the respondent herein). It can be easily construed from the above letter issued by this Hon'ble Authority that the Respondent company has abided by all the laws/rules/regulations laid down under the Real Estate (Regulation and Development) Act, 2016.*

The Authority has examined the reply of notice carefully vis-a vis provisions of the Haryana Regulation and Development of Urban Areas, 1975 and the provisions of RERA Act of 2016 Rules and Regulations framed thereunder and is satisfied with the reply of the respondent no.1. Accordingly, Authority discharge its show cause notice dated 25.09.2024. Further, in view of the reply of show cause notice submitted by the respondent no.1, relief no. (iii), (iv) and (v) sought by the complainant are not maintainable.

29. Complainants are seeking compensation on account of mental agony, mental harassment and cost of litigation. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

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


30. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the RERA Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent no.1 is directed to pay the interest (and excess paid amount) to complainants as mentioned in table under para no. 26. However, complainants in complaint no. 2042 of 2022 and 2155 of 2022 are liable to pay balance amount as mentioned in table under para 26, with delayed payment interest.



- (ii) The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent no.1/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.
- (iii) A period of 90 days is given to the respondent no.1 to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

**Disposed off.** Files be consigned to the record room after uploading of the order on the website of the Authority.

  
CHANDER SHEKHAR  
[MEMBER]

  
NADIM AKHTAR  
[MEMBER]