

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

**Complaint no.:** 5319 of 2023

**Date of decision:-** 14.05.2025

Vinay Kumar Sadh  
**R/o:** - E-158/176, Lajpat Nagar-1,  
New Delhi-110024.

**Complainant**

**Versus**

1. M/s. BPTP Limited  
**Regd. office:** M-11, Middle Circle,  
Cannaught Circle, New Delhi-110001.

2. M/s. Countrywide Promoters Pvt Ltd.  
**Regd. Office:** 28, ECE House, Floor-1<sup>st</sup>,  
K.G. Marg, New Delhi-110001.

**Respondents**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Priyanka Agarwal

Harshit Batra

**Complainant**

**Respondents**

**ORDER**

1. The present complaint dated 17.11.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short,

the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. No.	Particulars	Details
1.	Name and location of the project	"AMSTORIA", Sector-102, Gurugram, Haryana.
2.	Project area	108.07 acres
3.	Nature of Project	Independent Residential Villas
4.	DTCP license no. and validity status	58 of 2010 dated 03.08.2010 Valid upto 02.08.2025
5.	Name of Licensee	M/s Countrywide Promoters Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered Vide registration no. 13 of 2025
7.	Unit No.	D-18, on 1 Villa, in Amstoria (As per page no.30 of complaint)
8.	Unit area admeasuring	1116 sq. yds. (As per page no.30 of complaint)
9.	Allotment letter	18.11.2011 (As per page no.18 of complaint)
10.	Date of execution of villas buyer's agreement	03.06.2013 (As per page no.21 of complaint)
11.	Possession clause	<b>5 Possession:</b> "...The seller /confirming party proposes

		to handover the physical possession of the said unit to the purchaser(s) within a period of 24 months from the date of sanction of building plan or execution of villas buyer's agreement, whichever is later. The purchaser(s) further agrees and understands that the seller/ confirming party shall additionally be entitle to a period of 180 days (grace period) after the expiry of the said commitment period to allow for filling and pursuing the occupancy certificate etc. from DTCP under the Act in respect of the entire colony." (As per page no.34 of complaint)
12.	Due date of possession	<b>03.12.2015</b> [03.06.2015 + grace period of 180 days] (Note: Calculate from date of execution of buyer's agreement, being date of sanction of building plan is not provided)
13.	Tripartite Agreement (With PNB Housing Finance Ltd.)	03.06.2013 (As per page no.77 of complaint)
14.	Loan closer letter	08.04.2021 (As per page no.77 & 78 of complaint)
15.	Total Sale Consideration	Rs.4,22,79,223/- (As per page no.19 of complaint)
16.	Amount paid by complainant	Rs.3,31,58,795/- (As per SOA dated 12.06.2013 at page no.68 of complaint)
17.	Payment plan	Construction linked
18.	Payment plan as per annexure C	<ol style="list-style-type: none"> <li>1. Booking amount-10% of BSP</li> <li>2. Within 90 days of booking-complete 20% of BSP</li> <li>3. At the Start of Construction-10% of BSP+ 50% of Dc</li> <li>4. On Casting of Basement Roof Slab-10% of BSP + 50% of DC</li> <li>5. On Casting of Ground Floor Roof Slab-</li> </ol>



		<p>10% of BSP + 50% of PLC</p> <p>6. On Casting of First Floor Roof Slab-10% of BSP + 50% of PLC.</p> <p>7. On Casting of Second Floor Roof Slab-7.5% of BSP + Club Membership</p> <p>8. On Completion of Brick Work-7.55 of BSP</p> <p>9. On Completion of Internal Flooring-7.5% of BSP</p> <p>10. On Completion of External Plastering-7.5% of BSP</p> <p>11. On Offer of possession-10% of BSP + IFMS + PBIC + Stamp Duty + Registration Charges and Administrative Charges</p> <p>(As on page no. 58 of complaint)</p>
19.	Occupation Certificate	Not obtained
20.	Offer of possession	Not on record
21.	Demand and reminder letters	23.11.2012, 05.11.2012, 03.12.2012, 13.12.2012, 03.01.2013, 04.02.2013, 08.02.2013
22.	Final notice for payment	03.04.2013 (As per page no.19 of reply)
23.	Notice for Termination	22.05.2013 (As per page no.141 of reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:
- That the respondents launched a residential villa project in the name and style of "Amstoria" situated at Sector-102, Gurugram. The complainant was allured by an enamored advertisement of the respondents and believing the plain words of the respondents in utter good faith the complainant booked a residential villa on 26.09.2011. Thereafter, vide acknowledgment letter dated 18.11.2011, the complainant was allotted a residential villa bearing no. D-18, admeasuring approx. 10,043 sq. ft. in the project.
  - That the total consideration of the said unit is Rs.4,22,79,223/- and

the complainant has paid a total sum of Rs.3,31,58,795.42/- in a time bound manner, as and when demanded by the respondents.

- III. That the respondents to dupe the complainant in their nefarious net did not even execute any "Space Buyer Agreement" with the complainant, and after much insistence, as the complainant had to apply for a home loan for which a duly agreement was required. The respondents reluctantly executed a BBA on 03.06.2013, as per which the respondents were liable to handover possession of the unit within 24 months from the date of Sanctioning of building plans, or execution of the BBA, whichever is later. Thus, on or before 03.06.2015, as the BBA was executed on 03.06.2013, being the later.
- IV. That the respondents devised a plan under which the respondents extracted money from allottees and didn't even bother to care about the development of the project till date. That it has been 10 years but the respondent is yet to complete the project. So, the project is extremely delayed.
- V. That as per Clause 5 of the said BBA, the respondents were liable to handover possession of the unit within 24 months from the date of sanctioning of building plans, or execution of the BBA, whichever is later. Thus, on or before 03.06.2015, as the BBA was executed on 03.06.2013, being later.
- VI. That the complainant even took a home loan of Rs.3,00,00,000/- from PNB Housing Finance Ltd. and a tripartite agreement dated 03.06.2013 was executed amongst the complainant, respondent and PNB Housing Finance Limited.
- VII. That the complainants kept on paying EMIs for the bank loan and seeking updates from the respondents about the development of the

project, but never got a satisfactory answer. Thereafter, on 08.04.2021, PNB Housing Finance Limited closed the loan account of the complainant as the complainant had repaid the said loan and NOC dated 22.06.2021 was issued by PNB Housing Finance Limited.

- VIII. That the complainant had visited the respondents' office several times but to no avail. The respondents have not yet completed the project. That the complainant tried to approach the builder to know the reason for inordinate delay but the respondent didn't reply. The respondents didn't disclose the date of possession but assured the complainants that delay penalty shall be paid at the time of offer of possession.
- IX. That such an inordinate delay in the delivery of possession to the allottee is an outright violation of the rights of the allottees under the provisions of the Act as well the agreement executed between complainants and respondents. The complainant demands delay penalty in terms of Section 18(1) read with Section 18(3) of the Act, along with principles of Justice, Equity and Good Conscience.
- X. That the cause of action to file the instant complaint has occurred within the jurisdiction of this Authority as the apartment which is the subject matter of this complaint is situated in Sector-102, Gurugram, which is within the jurisdiction of this Authority

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

4. The complainant has sought following relief(s):-
- i. Direct the respondents to pay delayed possession charges from the due date of possession till the date of actual handover of the possession along with interest as the rate prescribed by the Act.

- ii. Direct the respondents to handover the actual physical possession of the fully furnished unit with all the amenities and fixtures as per the BBA; at the earliest.
- iii. Initiate penal proceedings against the respondents for non-registration of the said project even after 6 years of implementation of the Act, 2016, which is a clear violation of Section 3 of the Act.
- iv. Impose heavy costs on the respondents for sheer violations of the provisions of the Act and causing untold misery, mental agony, emotional turmoil and continuous harassment to the complainant

**D. Reply on behalf of respondents :**

5. The respondents have made the following written submissions:

- I. That the respondent no. 2 is not a proper party to the present matter and the name of respondent no. 2 may kindly be deleted from the array of party. It is imperative to note that the complainant was in direct contact with respondent no. 1 and no correspondence or any dispute of the complainant in present complaint pertains to respondent no. 2. Moreover, no specific relief has been sought by respondent no. 2 and hence the name of respondent no. 2 may kindly be deleted from the array of parties.
- II. That the complainant being interested in the group housing project of the respondent no. 1, known under the name and style of "AMSTORIA" located at Sector 102, Gurugram, Haryana booked a unit in the said project vide an application form dated 21.09.2011 by paying a booking amount of Rs.37,00,000/-.

- III. That subsequently, a unit bearing number D-18, Villa 1, tentatively admeasuring 10,043 sq. ft. was allotted to the complainant vide Allotment Letter dated 18.11.2011. It is submitted that prior to approaching the respondents, the complainant had conducted extensive and independent enquiries with regards to the project and only after being completely satisfied with regards to all aspects of the project, the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents.
- IV. That the complainant consciously and wilfully opted for "Construction Linked Payment Plan" as per his choice for remittance of the sale consideration for the unit. That the respondents had no reason to suspect bonafide of the complainant.
- V. That after the allotment of the unit in favour of the complainant vide Allotment Letter dated 18.11.2011, the respondent no. 1 sent 2 copies of the Builder Buyer Agreement along with a cover letter dated 12.06.2012 for the execution of the same. However, the complainant delayed in returning the same and the Agreement was finally executed on 03.06.2013. The rights and obligations of the complainant as well as the respondents are completely and entirely determined by the covenants incorporated in the Agreement which continue to be binding upon the parties thereto with full force and effect.
- VI. That along with the execution of the Agreement dated 03.06.2013, the complainant had also executed an Undertaking dated 03.06.2013 as per which the complainant agreed to the tentative nature of the Layout Plan and Super Area of the unit and also undertake to have no objection if the layout or the building plans of the unit or the project gets changed

for any reasons whatsoever. The relevant Clause 4 of the Affidavit is reiterated hereunder:

*"4. That, while offering me the allotment I have been informed that the layout/building plan is tentative and its super built up area may change for any reason what so ever and if such changes take place due to change or any modification(s)/revision(s) in the tentative lay out/building plan of the said Plot/Flat/Floor/Villa during the construction/completion of the floors then I undertake to the company that I/we shall have no objection to same."*

- VII. That as per clause 5.1 of the Agreement, the due date of offer of possession is 24 months from the date of sanction of the Building Plan or execution of Builder Buyer's Agreement, whichever is later along with a grace period of 180 days, subject however, to the *force majeure* circumstances.
- VIII. That the construction of the unit was hampered due to and was subject to the happening of the *force majeure* and other circumstances beyond the control of the company, the benefit of which is bound to be given to respondent no.1 in accordance with clause 14 of the Agreement, which is reiterated hereunder:

**"14. Force Majeure:**

*That the compliance hereof, by the Seller/Confirming Party, of the terms and conditions of this Agreement shall be subject to Force Majeure circumstances, such as act of God, fire, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy/ labour in "Amstoria", equipment, facilities, material or supplies, failure of transportation, strike, lock-outs, action of labour union, change of Law, Act of Government or intervention of Statutory Authorities like DTCP/MCF or any other cause not within the reasonable control of the Seller/Confirming Party."*

- IX. That the respondents faced certain *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal

thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times of the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondents no.1 to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondents no.1 completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done.

- X. That the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019

which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

- XI. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country. Therefore, it is safely concluded that the said delay in the seamless

execution of the project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay.

- XII. That it is comprehensively established that a period of 292 days was consumed on account of circumstances beyond the power and control of respondent no.1, owing to the passing of Orders by the statutory authorities. Thus, the respondent no.1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the Agreement.
- XIII. That the timely payment of the sales consideration of the unit was the essence of the Agreement executed between the parties as per clause 7 of the Agreement. That in case of default by the complainant, the complainant was bound to make the payment of interest.
- XIV. That various demand letters were raised as per the agreed payment plan however, the complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainant from time to time. That the bonafide of the respondent is also essential to be highlighted at this instance, who had served request letters at every stage and reminder notices in case of non-payment.
- XV. That the complainant stood in the event of default for not making payment and non-payment of statutory dues. Accordingly, the respondent no.1 had a right to terminate the unit. That multiple opportunities were given to the complainant to rectify their default

through the reminder notices and final demand notice for payment of outstanding amount. However, the complainant again willingly and voluntarily chose not to rectify the same, and consequently, after waiting for an ample period of time, the respondent no.1 was constrained to terminate the allotment of the unit of the complainant by issuing the termination letter dated 22.05.2013.

- XVI. That the complainant was left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit, the respondent no. 1 is well within their right to forfeit the earnest amount along the delayed payment interest till the date of termination and other non-refundable amount including brokerage charges, processing fees, any monetary benefit given to the purchaser and the statutory dues paid against the unit.
- XVII. That after the termination of the Agreement, no right or lien of the complainant exists in the said unit and the Agreement between the parties came to an end. That 'no person should be granted the benefit of their own wrong' is a settled principle of law and is squarely applicable in the present case, where the default of the complainants had led to the termination of the unit. That even after providing ample number of opportunities to the complainant in order to clear the outstanding dues, the complainant time and again failed to abide by the terms and conditions of the Agreement and remit the same. That due to the failure of the complainant in remitting the outstanding dues, the unit of the complainant was terminated vide Termination Letter dated 22.05.2013.
- XVIII. That it is imperative to note that the complainant had approached the Authority and filed the present complaint after 3824 days (10 years 5

months and 19 days) and therefore, the present complaint is barred by limitation and is liable to be dismissed.

XIX. That all the claims put forth by the complainant in the present complaint are wrong and frivolous. That, it was the complainant who failed to remit the outstanding dues and abide the terms and conditions of the Agreement. The complainant cannot be benefitted for his own wrong and hence the present complaint is liable to be dismissed as the same is filed almost after 11 years of the termination of the unit.

6. 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 these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

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

**F. I Territorial jurisdiction**

9. 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**

10. 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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

11. 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 complainants at a later stage.

**G. Findings on objections raised by the respondent**

**G.I. Objection regarding deletion of respondent no.2 i.e., M/s. Countrywide Promoters Pvt. Ltd. from the array of parties.**

12. The respondent no.1 has raised an objection of wrongful impleadment of respondent no.2 i.e., M/s. Countrywide Promoters Pvt. Ltd. in the array of parties. The respondent-promoter has stated that respondent no.2 is not a proper party and no specific relief has been sought by the complainant from respondent no.2.
13. On failure to fulfil their obligation to complete the project by the due date, the complainant approached the Authority seeking relief of delayed possession charges and others against the allotted unit. On the other hand, the respondent no. 1 raised a preliminary objection to w.r.t.

deletion the name of respondent no. 2 from the array of parties. That the respondent no. 2 is not effective and vide order bearing no. CP (CAA) 26/Chd/Hry/2023 dated 20.09.2024 passed by Hon'ble NCLT, Chandigarh, the respondent no. 2 company has transferred its assets to the transferee company. That the respondent no. 2 is not a separate legal entity as on date and no legal action can be proceeded against the respondent no. 2, hence, the name of the respondent no. 2 should be deleted from the array of parties.

14. In view of the same, the name of respondent no. 1 (M/s Countrywide Promoters Private Limited) is deleted from the array of parties in terms of the order dated 20.09.2024, in complaint bearing no. CP (CAA) 26/Chd/Hry/2023 passed by the Hon'ble NCLT, Chandigarh.

**G.II Objection regarding delay due to force majeure circumstances**

15. The respondent no. 1 have raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondents, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the complainant was allotted a villa bearing no. D-18 admeasuring 1116 sq.yrds vide allotment letter dated 18.11.2022. Thereafter, the Villas Buyer's Agreement was executed between the parties on 03.06.2013. As per clause 5 of the

Agreement dated 03.06.2013, the due date for offer of possession of the unit was 24 months from the date of sanction of the building plan or execution of villa buyer's agreement, whichever is later, along with a grace period of 180 days over and above the said period. The period of twenty four months is calculated from the date of execution of the agreement. The Villa Buyer Agreement has been executed between the parties on 03.06.2013, the period of 24 months from 03.06.2013 comes out to be 03.06.2015. Further, an unqualified grace period of 180 days has been agreed between the complainant and the respondents to be granted to the respondents over and above the said 24 months. The same is granted to the respondents, being unqualified. Thus, the due date of possession comes out to be 03.12.2015. The respondent is seeking the benefit of Covid-19, which came into effect much after the due date of offer of possession. Therefore, no further relief in respect to the same can be granted to the respondents. The respondents have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, water shortage, labour shortage etc, but these were for a short period of time and are the events happening every year. The respondent was very much aware of these event and thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

**G.III. Objection regarding complaint being barred by limitation.**

17. The respondent/promoter has raised an objection that the present complaint has been filed after a delay of more than 10 years from the date of cancellation of the unit and is therefore, barred by limitation and liable to be dismissed.
18. The Authority is of the view that the alleged cancellation letter dated 22.05.2013 is void as subsequent to the said cancellation letter dated 22.05.2013, the Villa Buyer's Agreement was executed between the complainant and the respondent on 03.06.2013 in respect of Villa bearing no. D-18, in the project of the respondent. The due date of handing over possession of the villa to the complainant was 03.12.2015. The respondent has failed to obtain the Occupation certificate from the concerned competent authorities till date, despite a lapse of 10 years. The cause of action in favour of the complainant and against the respondent is still continuing. Thus, the contention of the respondent that the complaint is barred by limitation is hereby rejected.

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

- H.I. Direct the respondents to pay delayed possession charges from the due date of possession till the date of actual handover of the possession along with interest as the rate prescribed by the Act.**
- H.II. Direct the respondents to handover the actual physical possession of the full furnished unit with all the amenities and fixtures as per the BBA.**
19. In the present complaint, the complainant was allotted villa bearing no. D-18, Type-Villa, admeasuring 1116 sq.yards in the project "Amstoria" situated at Sector-102, Gurugram by the respondents for a sale

consideration of Rs. 4,22,79,223/- and he has paid a sum of Rs.331,58,795/- till date. A Villa Buyer's Agreement dated 03.06.2013 was executed between the complainant and the respondents. As per Clause 5 of the Agreement dated 03.06.2013, the respondents were obligated to complete the construction of the project and handover the possession of the subject unit within 24 months from the date of sanction of building plan or execution of the Villa Buyer's Agreement, whichever is later alongwith a grace period of 180 days after the expiry of the said commitment period. Thus, the due date comes out to be 03.12.2015.

20. Vide proceedings dated 26.03.2025, the respondent was asked to clarify the status of the Occupation Certificate, to which the respondent stated that the same shall be filed with the written submissions. The written submissions on behalf of the respondent was received on 07.05.2025, but no status regarding the Occupation Certificate has been clarified by the respondent. Also, nothing regarding the grant of Occupation Certificate is available on the website of the Town and County Planning, Haryana. Thus, the Authority is of the view that the Occupation Certificate for the project has not yet been obtained from the competent authority. The respondent has stated that the allotment of the unit of the complainant stands terminated on 22.05.2013 on account of non-payment by the complainant. The Authority is of the view that the alleged termination letter dated 22.05.2013 was prior even to the execution of the Buyer's Agreement which was executed on 03.06.2013 after the date of alleged

termination letter dated 22.05.2013. Thus, the Termination letter dated 22.05.2013 is void as it has been superseded by the Buyer's Agreement dated 03.06.2013.

21. The complainant intends to continue with the project and is seeking delay possession charges interest on the amount paid. 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:

***"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)*

22. Clause 5 of the Villa Buyer's Agreement (in short, agreement) provides for handing over of possession and is reproduced below:

*5. The Seller/confirming party proposes to handover the physical possession of the said unit to the purchaser(s)) within a period of*

*24 months from the date of sanction of building plan or execution of villas buyer's agreement, whichever is later. The purchaser(S) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days (grace period) after the expiry of the said commitment period to allow for filling and pursuing the occupancy certificate etc. from DTCP under the Act in respect of the entire colony"*

- 23. Due date of possession and admissibility of grace period:** As per Clause 5 of the agreement dated 03.06.2013, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 24 months from the date of execution of the agreement or within 24 months from the date of sanction of building plans, whichever is later. Further, an unqualified grace period of 180 days is agreed between the parties over and above the period of 24 months. The date of sanction of building plans as per the written submissions of the respondent was 19.09.2012 and the agreement was executed on 03.06.2013, thus, the date of execution of the agreement was later. Therefore, the due date is calculated from date of execution of buyer's agreement i.e., 03.06.2013. Hence, the due date comes out to be 03.12.2015 including grace period of 180 days as it is unqualified.

- 24. Payment of delay possession charges at prescribed rate of interest:**  
The complainant is seeking delay possession charges at the 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.*

25. The legislature in its wisdom in the subordinate legislation under the provision of 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.
26. 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., 14.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

29. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5 of the buyer's agreement, the possession of the subject unit was to be delivered within stipulated time i.e., by 03.12.2015. However, till date no occupation certificate has been received by respondents and neither possession has been handed over to the complainant till date.

30. The Authority is of considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 03.06.2013. Accordingly, it is the failure of the respondent/promoter to

fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

31. 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/promoter is established. As such, the allottee shall be paid by the promoter interest for every month of delay from the due date of possession i.e., 03.12.2015 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**H.III. Initiate penal proceedings against the respondents for non-registration of the said project even after 6 years of implementation of the Act, 2016, which is a clear violation of Section 3 of the Act.**

31. The counsel for the respondent has annexed a registration certificate along with the written submissions but on perusal of the same, the Authority is of the view that the same is in respect of some other project and not the subject project. Also, as per the data available on the Authority's website, the project stands unregistered. Thus, the planning branch of the Authority is directed to take necessary actions in this regard.

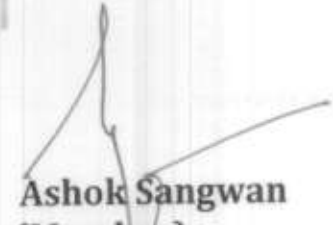
**H.IV. Impose heavy costs on the respondents for sheer violations of the provisions of the Act and causing untold misery, mental agony, emotional turmoil and continuous harassment to the complainant**

32. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

#### **I. Directions of the authority**

33. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- The cancellation dated 22.05.2013 is void and hereby set aside.
  - The respondent/promoter is directed to pay interest at the prescribed rate of 11.10% p.a. for every month of delay from due date of possession i.e., 03.12.2015 till the date of valid offer of possession plus 2 months after obtaining occupation certificate from the competent authority or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 11.10% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
  - The respondent is directed to hand over the actual physical possession of the unit to the complainant within 2 months after obtaining occupation certificate

- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The arrears of such interest accrued from 03.12.2015 till the date of order by the authority 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 promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- vii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
34. The Authority observes that the project is not registered hence, the planning branch of the authority is directed to take necessary action under the provision of the Act of 2016 for violation of proviso to Section 3(1) of the Act
35. Complaint stands disposed of.
36. File be consigned to registry.

  
**Ashok Sangwan**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 14.05.2025