

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

Order reserved on: **11.03.2025**

Order pronounced on: **20.05.2025**

NAME OF THE BUILDER		BPTP Limited.
PROJECT NAME		"Astaire Garden", Sector- 70&70A, Gurugram, Haryana
S. No.	Case No.	Case title
1.	CR/2292/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
2.	CR/2287/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
3.	CR/2289/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
4.	CR/2288/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
5.	CR/2290/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
6.	CR/2291/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
7.	CR/2285/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
8.	CR/2286/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
9.	CR/2284/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited
10.	CR/2283/2023	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman
Member
Member

Appearance:

Shri Sanjeev Sharma (Advocate) along with Neeraj Chaudhry complainant no. 1 in person

Shri Venket Rao and Sh. Gunjan Kumar (Advocates)

None

Complainants
Respondent no. 1
Respondent no. 2

ORDER

1. This order shall dispose of 10 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules")

for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Astaire Garden", Sector- 70A, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s BPTP Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question seeking award of possession and delayed possession charges and others.
3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	"Monet Avant floor" in "Astaire Garden" at Sector 70&70A, Gurugram.
Project area	102.2 acres
Nature of the project	Residential group housing colony
DTCP license no. and other details	15 of 2011 dated 07.03.2011 Valid up to- 06.03.2024 Licensee- Impartial Builders Developers Pvt. Ltd. and 22 others
RERA Registered/ not registered	55 of 2021 dated 21.09.2021 Valid up to 31.08.2026
Occupation certificate	14.02.2018 (Page no. 135 of reply)
Possession clause as per buyer's agreement	<i>Clause 2.2 "Committed period" shall mean, subject to force majeure circumstances, intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities and/or documentations, as prescribed/requested by seller/confirming party, under this agreement and not being in default under any part of this agreement, including but not limited to the timely payment of all installments of the cost of property and other charges as per the payment plan opted, the seller/confirming party shall offer the possession</i>

of the floor to the purchaser(s) within a period of 18 months from the date of execution of floor buyer agreement.

(Page no. 63 of reply)

2.15 "Grace Period" refers to additional period of 180 days after the expiry of the commitment period for making an offer of possession of floor.

(Page no. 69 of reply)

S. No.	Complaint no., Case title, Date of filing of complaint and reply status	Unit no. and size	Allotment Letter, BBA and TPA	Due date of possession	Total sale consideration and Total amount paid by the complainant in Rs.	Offer of possession, and Third party right created on
1.	CR/2292/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-100-FF, on 1 st Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 70 of reply]	AL:- 03.03.2015 [Page 60 of reply] BBA 05.03.2015 [Page 64 of reply] TPA 10.03.2015 [Page 89 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,07,75,005/- [As per statement of account at page 143 of reply]	OOP 09.12.2019 [Page 141 of reply] TPRC 18.04.2023 (Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)
2.	CR/2287/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-100-SF, on 2 nd Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 66 of reply]	AL:- 03.03.2015 [Page 56 of reply] BBA 05.03.2015 [Page 61 of reply] TPA 10.03.2015 [Page 86 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,07,74,999/- [As per statement of account at page 140 of reply]	OOP 09.12.2019 [Page 138 of reply] TPRC 04.07.2023 (Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)

3.	CR/2289/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-102-SF, on 2 nd Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 67 of reply]	AL:- 03.03.2015 [Page 57 of reply] BBA 05.03.2015 [Page 62 of reply] TPA 10.03.2015 [Page 87 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,07,74,999/- [As per statement of account at page 145 of reply]	OOP 09.12.2019 [Page 143 of reply] TPRC 03.07.2023 [Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025]
4.	CR/2288/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-102-FF, on 1 st Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 68 of reply]	AL:- 03.03.2015 [Page 58 of reply] BBA 05.03.2015 [Page 63 of reply] TPA 10.03.2015 [Page 87 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,11,58,429/- [As per statement of account at page 143 of reply]	OOP 09.12.2019 [Page 141 of reply] TPRC 20.06.2023 [Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025]
5.	CR/2290/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-103-SF, on 2 nd Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 69 of reply]	AL:- 03.03.2015 [Page 58 of reply] BBA 05.03.2015 [Page 64 of reply] TPA 10.03.2015 [Page 88 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,07,74,999/- [As per statement of account at page 142 of reply]	OOP 09.12.2019 [Page 140 of reply] TPRC 31.03.2023 [Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025]
6.	CR/2291/2023	C-101-SF, on 2 nd Floor,	AL:- 03.03.2015	05.03.2017	TSC: 1,29,65,325/-	OOP 09.12.2019

	Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	(Monet Avant floor) 1730 sq. ft. (Super area) [Page 69 of reply]	[Page 59 of reply] BBA 05.03.2015 [Page 64 of reply] TPA 10.03.2015 [Page 88 of reply]	(Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	(Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,07,74,999/- [As per statement of account at page 144 of reply]	[Page 142 of reply] TPRC 03.07.2023 (Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)
7.	CR/2285/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-101-FF, on 1 st Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 68 of reply]	AL:- 03.03.2015 [Page 58 of reply] BBA 05.03.2015 [Page 63 of reply] TPA 10.03.2015 [Page 87 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,07,74,999/- [As per statement of account at page 141 of reply]	OOP 09.12.2019 [Page 139 of reply] TPRC 03.07.2023 (Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)
8.	CR/2286/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 25.05.2023 RR: 06.02.2024 By R1	C-103-FF, on 1 st Floor, (Monet Avant floor) 1730 sq. ft. (Super area) [Page 69 of reply]	AL:- 03.03.2015 [Page 58 of reply] BBA 05.03.2015 [Page 64 of reply] TPA 10.03.2015 [Page 88 of reply]	05.03.2017 (Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,29,65,325/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 1,11,58,429/- [As per statement of account at page 146 of reply]	OOP 09.12.2019 [Page 144 of reply] TPRC 31.03.2023 (Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)
9.	CR/2284/2023 Neeraj Chaudhry and Monia Chaudhry V/S	C-58-GF, on Ground Floor, (Monet Avant floor)	AL:- 20.03.2015 [Page 56 of reply]	24.03.2017 (Note:- Due date of possession is calculated 18 months from the	TSC: 1,27,03,966/- (Page no. 2 of the affidavit filed by the R1 on 09.01.2025)	OOP 09.12.2019 [Page 140 of reply] TPRC

	BPTP Limited DOF: 26.05.2023 RR: 06.02.2024 By R1	2512 sq. ft. (Super area) [Page 67 of reply]	BBA 24.03.2015 [Page 62 of reply] TPA 26.03.2015 [Page 88 of reply]	date of execution of FBA with a grace period of 180 days)	AP: 1,11,58,429/- [As per statement of account at page 142 of reply]	03.07.2023 [Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)																		
10.	CR/2283/2023 Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited DOF: 26.05.2023 RR: 06.02.2024 By R1	C-58-FF, on 1 st Floor, (Monet Avant floor) 1390 sq. ft. (Super area) [Page 70 of reply]	AL:- 20.03.2015 [Page 58 of reply] BBA 24.03.2015 [Page 65 of reply] TPA 26.03.2015 [Page 90 of reply]	24.03.2017 [Note:- Due date of possession is calculated 18 months from the date of execution of FBA with a grace period of 180 days)	TSC: 1,06,23,983/- [Page no. 2 of the affidavit filed by the R1 on 09.01.2025) AP: 94,51,402/- [As per statement of account at page 144 of reply]	OOP 09.12.2019 [Page 142 of reply] TPRC 03.06.2023 [Page no. 2&4 of the affidavit filed by the R1 on 09.01.2025)																		
Relief sought by the complainant:- i. Direct the respondent to offer the possession of the unit in question and be handed over immediately. ii. Direct the respondent to pay interest for delay possession charges till the actual handover of the unit in question.																								
Note: In the table referred above certain abbreviations have been used. They are elaborated as follows: <table><tr><td>Abbreviation</td><td>Full form</td></tr><tr><td>DOF</td><td>Date of filing of complaint</td></tr><tr><td>RR</td><td>Reply received by the respondent</td></tr><tr><td>TC</td><td>Total consideration</td></tr><tr><td>AP</td><td>Amount paid by the allottee/s</td></tr><tr><td>BBA</td><td>Builder Buyer's Agreement</td></tr><tr><td>AL</td><td>Allotment Letter</td></tr><tr><td>OOP</td><td>Offer of possession</td></tr><tr><td>TPRC</td><td>Third party created on</td></tr></table>							Abbreviation	Full form	DOF	Date of filing of complaint	RR	Reply received by the respondent	TC	Total consideration	AP	Amount paid by the allottee/s	BBA	Builder Buyer's Agreement	AL	Allotment Letter	OOP	Offer of possession	TPRC	Third party created on
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4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/2292/2023** titled as **Neeraj Chaudhry and Monia Chaudhry V/S BPTP Limited**. are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

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

CR/2292/2023 titled as Neeraj Chaudhry and Monia Chaudhry V/s BPTP Limited

S. No.	Particulars	Details
1.	Name of the project	"Monet Avant floor" in "Astaire Garden"
2.	Project location	Sector 70&70A, Gurugram
3.	Project type	Residential Group Housing Colony
4.	RERA registered/ not registered	55 of 2021 dated 21.09.2021 Valid up to 31.08.2026
5.	Allotment letter	03.03.2015 [As per page no. 18 of complaint]
6.	Unit No.	C-100-FF [As per page no. 18 of complaint]
7.	Unit Area	1730 sq. ft. [As per page no. 18 of complaint]
8.	Date of agreement for sale	05.03.2015 (Page no. 64 of reply)
9.	Tripartite Agreement	10.03.2015 (as per page no. 21 of complaint)
	Bajaj Finance Ltd. has agreed to grant a loan of Rs.90,00,000/- to the borrowers.	
10.	Possession clause	Clause 2.2 "Committed period" shall mean, subject to force majeure circumstances, intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities and/or documentations, as prescribed/requested by seller/confirming party, under this agreement and not being in default under any part of this agreement, including but not limited to the timely payment of all installments of the cost of property and other charges as per the payment plan opted, the seller/confirming party shall offer the possession of the floor to the purchaser(s) within a period of 18 months from the date of execution of floor buyer agreement.
11.	Due date of possession	10.09.2016 (Note:- calculated from the buyer's agreement)

12.	Total cost	Rs.1,38,46,573/- (Page no. 143 of reply)
13.	Amount paid	Rs.1,07,75,005/- [Page no. 143 of reply]
14.	Occupation certificate	14.02.2018 [As per page no. 135 of reply]
15.	Offer of possession	09.12.2019 (as per page no. 141 of reply)

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -

- I. That upon the representation by the respondents and advertisement done in said behalf, the Respondents was to construct a residential group housing colony namely "ASTAIRE GARDENS SECTOR 70A" on parcel of land located at Sector-70A, Gurgaon, Haryana.
- II. That the complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing a 10 residential units with the respondent and which interest was shown by the complainant upon the inducement made by respondents that the project shall be completed on time and shall be constructed keeping in place the highest construction methods clubbed with all modern facilities.
- III. That upon the above said inducement the complainant herein booked and was allotted 10 Residential units in the project vide 10 separate allotment letters all dated 03.03.2015. The details of the units booked is as follow:-

S. No.	Unit No.	Specification of Unit	Area (Tentative)	Price (BSP)
1	C-100-FF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
2.	C-100-SF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
3.	C-101-FF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
4.	C-101-SF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
5.	C-102-FF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-

6.	C-102-SF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
7.	C-103-FF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
8.	C-103-SF	4 Bedroom and 3 Washroom	1730 sq. ft.	Rs.10,939,867/-
9.	C-58-GF	3 Bedroom and 3 Washroom	2512 sq. ft.	Rs.1,16,768,00/-
10.	C-58-FF	3 Bedroom and 3 Washroom	1428 sq. ft.	Rs.95,96,817/-

- IV. That as per the allotment letter, the allotment letter was to be followed by a proper flat buyer agreement was to be executed, however even after repeated request made by the complainant the respondent till date has failed to execute the flat buyer agreement with respect to any of the unit.
- V. That further the complainants in order to purchase the units in question had to avail loan from Bajaj Finance Limited to the extent of 82% of the cost of the flat i.e., to say that out of total cost of Rs.10,87,92,553/- (of all 10 flats) 82% of the amount was financed and paid by Bajaj Finance Limited amounting to Rs.8,92,50,000/- and the complainant was to pay Rs.1,95,42,553/-. The complainant has already got the instalments paid from the bank to the total sum of Rs.8,92,50,000/- (for all 10 flats) and complainant has paid from his own source to the tune of Rs.1,75,59,832/-(for all 10 flats).
- VI. That at the time of availing loan from the Bajaj Finance Limited, a tripartite agreement dated 10.03.2015 was also entered in between complainants, respondent and the bank.
- VII. That the respondents themselves vide their email dated 16.06.2015 and 20.07.2015 assured the complainants that the possession of the units in question would be handed over latest by 01.03.2017. The complainants herein having booked the units in question patiently waited to receive the actual physical possession of the units in question till 01.03.2017 i.e. the date of possession as promised by the respondents, however on 01.03.2017 the respondents expressed that due to some reason the project is slightly

delayed and that having said so possession of the units in question shall be handed over at the earliest.

- VIII. That believing in the words of the respondents the complainant duly kept paying the EMI to the bank till November 2017, however seeing that the project was far away from completion even on said date and due to certain other personal factors could not pay EMI to the Bank thereafter.
- IX. That though the facts being stated in the present paragraph is not to concern with the present complainant however as abundant precaution of not concealing facts from this Authority due to some financial dispute, the complainant, however seeing that the project was far away from completion and due to certain other personal factors could not pay EMI to the Bank thereafter the Financial institution issued notice u/s 13(2) of the SARFESI Act upon the complainant which was actually never served. Thereafter, on 20.04.2018 the banking institution even without waiting for expiry of 60 days period issued notice under section 13(4) of the SARFESI Act upon the complainants. That in order to settle matter with the financial institution one time settlement dated 30.06.2018 was arrived by the complainants for a total amount of Rs.70 Lakh per flat, and had paid an amount of Rs.1,11,30,315/-. However, the same could not be materialized till end as in order to value stand by the settlement, (SIC) the complainants wanted to sell the units in question and thus requested respondents herein to give updated statement of accounts as also possession of same which was never provided by the respondents.
- X. That having said the above and which dispute qua the complainant and financial institution does not even concern respondents, till date the respondent have failed to offer legal possession of the units in question to the complainants. As on date the respondents have already received an amount

of Rs.10,68,09,832/- against the total price of the 10 units, however the possession of the same has not been offered.

- XI. Thus, the complainant approached this Authority and filed a complaint relating to issue relating to delay of possession charges by invoking the jurisdiction of this Authority under section 18 of the Act, 2016. Further, the complainant also reserves her right to file separate complaint for compensation as and when required before the appropriate forum/ Authority.

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):
- I. Direct the respondent to offer the possession of the unit in question and be handed over immediately.
 - II. Direct the respondent to pay interest for delay possession charges till the actual handover of the unit in question.
8. The present complaint has been filed on 25.05.2023 against the two respondents namely M/s BPTP Limited and M/s Countrywide Promoters private limited. The reply on behalf of respondent no. 1 (BPTP Limited) was received on 06.02.2024. Respondent no. 2 (M/s Countrywide Promoters private limited) failed to put in appearance before the authority and also failed to file any written reply. In view of the same, vide order dated 28.01.2025, the matter was proceeded ex-parte against respondent no. 2.
9. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent no. 1

10. The respondent no. 1 is contesting the complaint on the following grounds:-
- i. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. That the complainants are estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint. That

the complainants have not come before this Authority with clean hands and has suppressed vital and material facts from this Authority. The correct facts are set out in the succeeding paras of the present reply.

- ii. That the complainants approached the respondent and expressed interest in the booking of ten independent residential floors in the real estate project known under the name and style of "Monet Avant Floors" at Astair Gardens at Sector 70 and 70A, Gurugram. Prior to the booking, the complainants conducted extensive and independent enquiries in regards to the project, its construction etc., and only after being fully satisfied on all the aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondents, to book the floor in question through their application form dated 19.03.2015.
- iii. That thereafter, the booking request of the complainants was accepted by the respondents and an allotment letter dated 20.03.2015 was issued to the complainants for the floor bearing number C-58-GF tentatively admeasuring 2512 sq. ft. The complainants consciously and willfully opted for a possession-linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondents that they shall remit every installment on time as per the payment schedule. The respondents had no reason to suspect the bonafide of the complainants and proceeded to allot the unit in question in their favor.
- iv. Thereafter, a floor buyer's agreement dated 24.03.2015, was executed between the complainants and the respondents wherein respondent no. 1 was noted to be a seller and respondent no. 2 licensee, as a confirming party. That the respondent no. 2 is the licensee and is neither a necessary and proper party to the present complaint and nor any relief has been sought by the complainant against the respondent no. 2. Hence, the name of the respondent no. 2 should be deleted from the array of parties. Furthermore,

the FBA was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

- v. That the complainants had availed financing facilities from Bajaj Finance Limited to make the payment against the unit by way of a housing loan of Rs.94,07,537/- and accordingly, a tripartite agreement dated 26.03.2015 was executed between the parties herein and Bajaj Finance.
- vi. That at this stage, it is not germane to mention that under section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "SARFAESI Act"), any bank or financial institution can transfer any financial asset to an asset reconstruction company which has been registered under section 3 of the SARFAESI Act. Section 5 of the SARFAESI Act is reiterated hereunder for ease of reference:-

Section 5 of the SARFAESI Act, 2002:

5. Acquisition of rights or interest in financial assets.—

(1) Notwithstanding anything contained in any agreement or any other law for the time being in force, any asset reconstruction company may acquire financial assets of any bank or financial institution—

(a) by issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or

(b) by entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them.

(1A) Any document executed by any bank or financial institution under sub-section (1) in favour of the asset reconstruction company acquiring financial assets for the purposes of asset reconstruction or securitisation shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899 (2 of 1899);

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitization.

(2) If the bank or financial institution is a lender in relation to any financial assets acquired under sub-section (1) by the asset reconstruction company, such asset reconstruction company shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

(2A) If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or licence of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets under sub-section (1).

(3) Unless otherwise expressly provided by this Act, all contracts, deeds, bonds, agreements, powers of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset under sub-section (1) and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the asset reconstruction company, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, asset reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of asset reconstruction company, as the case may be.

(4) If, on the date of acquisition of financial asset under sub-section (1), any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the asset reconstruction company, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the asset reconstruction company, as the case may be.

(5) On acquisition of financial assets under sub-section (1), the asset reconstruction company, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the asset reconstruction company in such pending suit, appeal or other proceedings.

[Emphasis Supplied]

- vii. That in accordance with the aforementioned Section 5(1)(b), Bajaj Finance transferred 3 (three) loan accounts and its security interest to an asset reconstruction company known under the name and style of **Phoenix ARC Pvt. Ltd.** vide an assignment agreement dated 03.12.2018. The borrowers

and security interests being transferred were as mentioned in Schedule I of the said assignment agreement, which are reiterated hereunder:

- Neeraj Chaudhry and Monika Chaudhry;
- Samson Wilkinson;
- Ram Meher

That out of the three loan accounts and security interests having been transferred, one of them is of the complainants. Hence, in accordance with the aforementioned Section 5(2A), Section 5(3), and Section 5(4), as on 03.12.2018, Phoenix ARC Pvt. Ltd. replaced Bajaj as a lender in relation to all the loan accounts, the security interest, the rights and the obligations arising from the said loan accounts; and the tripartite agreement dated 26.03.2015, stood enforceable with Phoenix ARC Pvt. Ltd.

- viii. That the said transfer is also categorically noted in the assignment agreement dated 03.12.2018. The relevant clauses 2.1.1. and 2.1.2 are reiterated below for reference:-

Clauses of Assignment Agreement:

2.1.1. The Parties hereto acknowledge that provisions of SARFAESI including but not limited to section 5(3) will be applicable thereto and the conditions precedent set forth in Clause 3 of this Agreement (Condition Precedent) have been fulfilled or waived by the Assignee, as the case may be, and in consideration of the Assignee having made payment of the Purchase Consideration to the Assignor on the Effective Date and upon the terms and conditions set forth herein and in the relevant Transaction Documents, the Assignor as the true, legal and beneficial owner of the Loans, in the ordinary course of its lending business, on and from the Effective Date absolutely, unconditionally and irrevocably sells, assigns, transfers and releases on an 'as is where is and as is what is' basis to and unto the Assignee all the rights, title, interest and benefits of the Assignor in the Loans forever, pursuant to Section 5(1) (b) of the SARFAESI TO HOLD the same absolutely IN TRUST for the benefit of the holders of the Security Receipts issued by the Assignee pursuant to the Phoenix Trust-FY19-5 Scheme I, and the Trust Dead TO THE END AND INTENT THAT the Assignee shall hereafter be deemed to be the full and absolute legal owner and the only person legally entitled to the Loans of any part thereof, free from any or all encumbrances, and to recover and receive all Amounts Due, including the right to file a suit or institute such other recovery proceedings and take such other action as may be required for the purpose of recovery of the Loans, in its own name and right and as an assigned and not as a representative or agent of the Assignor and to exercise all other rights of the Assignor in relation thereto.

2.1.2.

The Assignor on and from the Effective Date further assigns in favour of the Assignee, all its rights, title, interest and benefits in the Financing Documents, all agreements, deeds, and documents related thereto and all collateral and underlying Security Interests in respect of the repayment of the Loans, which the Assignor is entitled to. The Assignee shall have the right to enforce such Security Interests and appropriate the amounts realized therefrom towards the repayment of the Loans and to exercise all other rights of the Assignor in relation to such Security Interests. The Assignor shall transfer/deliver or cause to be transferred/delivered to the Assignee, all such original documents deeds and/or writings including but not limited to the Financing Documents, and produce the same promptly upon any request by the Assignee.

- ix. That in accordance with the above provisions of the SARFAESI Act, 2002 and the assignment agreement dated 03.12.2018, Phoenix ARC Pvt. Ltd. is considered as the lender of the loan account of the complainant and all the rights and obligations arising therefrom and the tripartite agreement dated 26.03.2015 stood enforced amongst the complainants, Phoenix ARC Pvt. Ltd., and the respondents. For ease of reference, Bajaj Finance Limited and Phoenix ARC Private Limited (referred to as the "Lender").
- x. That the same was also communicated to the respondents and the complainants by the lender through a letter dated 30.05.2019. At this stage that the said assignment did not alter the obligation of the complainant to make the payment as per the agreed terms and conditions of the FBA and the tripartite agreement. That the said tripartite agreement was executed by the complainants on the clear and cogent undertaking given by the complainants, as recorded in its preamble, which is reiterated hereunder:-
- "...an irrevocable undertaking given by the Borrowers that subsequent to the disbursements as requested by the Borrowers, there would be no repayment default for any reason whatsoever including but not limited to any concern/issues by and between the Borrowers and the Builder/Developer"*
- xi. That in accordance with the above, the disbursement was made by the lender. That at this stage, it is not out of place to take note the fact that as per the payment plan, all three milestones of payment (i.e., booking, within 15 days of booking, and at the time of offer of possession) have been duly reached and accordingly, demands were raised. Despite the fact that the

respondents were faced with a number of *force majeure* circumstances in the development of the project, the respondents rightly completed the construction of the project and the same was thereafter issued on 19.09.2017. That once an application for the grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondents cease to have any control over the same. The grant of the occupation certificate is the prerogative of the concerned statutory authority only however, the respondents have diligently and sincerely pursued the matter with the concerned authority for obtaining the occupation certificate. No fault or lapse can be attributed to the respondents in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant the occupation certificate to the respondents is necessarily required to be excluded from the computation of the time period utilized for the development of the project. Thereafter, the offer of possession was made to the complainants on 09.12.2019. The details of the demands raised as per the payment plan, and the payments made by the complainants and the lender are as under:-

Date	Due Amount and Milestone	Due date of payment	Payment
	Rs.1,00,000/- At the time of booking	-	Rs.1,00,000/-
27.03.2015	Rs.94,51,543/- Within 15 days of booking		Rs.18,27,809/- on 25.03.2015 Rs.93,30,620/- on 06.04.2015
09.12.2019	Rs.25,81,844/- At the time of offer of possession	08.01.2020	Not paid
Total Paid:			Rs.1,11,58,429.25/-
Total sale price (without cost escalation):			Rs.1,27,03,966/-
Outstanding at the time of offer of possession:			Rs.25,81,844.39/-

- xii. That however, despite the disbursement having been done by the lender, the complainants failed to make the payment in terms of the tripartite agreement. In such a circumstance, the lender had the right to seek refund upon a notice to the respondents. The relevant clauses 6, and 12 are reiterated hereunder:-

Clauses of the Tri-Partite Agreement:

6. Further, the Builder, in the event of default of repayment of loan by the Borrowers, shall on written intimation/instructions of Bajaj Finance Ltd., cancel the allotment of the Property of the Borrowers and refund, the entire amount advanced / funded by Bajaj Finance Ltd. directly to Bajaj Finance Ltd. The Builder shall have right to recover/forfeit the earnest money.

12. In the event of default by the buyer's or Mortgagor/s or Borrowers, if the Bajaj Finance Ltd. exercise its right enforces the security by sale, the Builder would accept the purchaser/s of the Property as a buyer, on such purchaser's complying with the necessary formalities which are required to become a buyer of the Builder.

- xiii. The act of non-payment of the dues by the complainants to the lender led the complainants to be declared as "non-performing assets" by the lender on 01.02.2018, even after which, the defaults of the complainants continued, which finally led to the cancellation of the unit on 03.01.2020 by the lender, in accordance with the above provisions of the tripartite agreement and seeking of refund of the paid amount. The relevant clause (d) to (h) of the cancellation letter are reiterated hereunder:-

(d) That it is a matter of your record and knowledge that the Allottees have failed to make the balance payment to you and the Allottees have also failed in repayment of the credit facilities to the Lender.

(e) That therefore the Lender has become entitled to receive back the entire money forthwith as per the terms of the tripartite agreement.

(f) That in fact, clauses of Tripartite Agreements puts an obligation on you that if Allottees fail to pay the balance amount representing the difference between the loan sanctioned by the Lender and the actual purchase price of the Floors, the entire amount advanced by the Lender will be refunded by you to the Lender forthwith. However, in the present case, though the Allottees have failed to pay the balance amount you have not yet refunded the advanced amount to the Lender till date.

(g) That the clauses of Tripartite Agreements also gives an option to the Lender that if Allottees default in repayment of loan then the Lender has an option to instruct you to cancel the allotment and refund the entire advanced/funded amount directly to the Lender.

(h) That in compliance with an unconditional undertaking given by you in Tripartite Agreements, we hereby exercise our right under the Tripartite Agreements and instruct you to refund the entire advanced amount. i.e., Rs.8,35,21,023/- (Eight Crores Eighty-Five Lakh Twenty-One Thousand Nine Hundred and Twenty-Three Only) along with interest 18% since the date of the default in payment of purchase price to you by the Allotees."

- xiv. That the cancellation of the unit is in furtherance of the agreed contractual provisions of the tripartite agreement and the allotment documents by which all parties were bound. Hence, pursuant to the defaults committed by the complainants in repayment of the credit facilities to the lender under the tripartite agreement and balance payment under the FBA, the cancellation of the unit was for cause and after the cancellation of the unit, there remained no right or lien of the complainants and in the present circumstances, the reliefs sought by the complainants are infructuous and cannot be granted.
- xv. That post the cancellation of the unit, the respondents had forfeited 10% of the total sales consideration along with the interest due, i.e., amounts of Rs.12,70,397/- and Rs.5,91,969/-, i.e., the total forfeiture amount was Rs.18,62,366/-. That the remaining amount was payable to the lender and not the complainants of the refundable amount, the respondents had duly settled in terms of the deed dated 29.03.2023, as noted in the following paras. That since the complainants had total 10 units, a consolidated amount was paid by the respondent to the lender.
- xvi. That thereafter, due to the default of the complainants, the respondents have already been harassed and undertaken through numerous falsely motivated complaints and litigations including a police complaint. That the lender had filed the following cases in lieu of the loan account of the complainants where the unit in question was kept as a security:-
- i. **Complaint under the SARFAESI Act, 2002 titled as Phoenix ARC Pvt. Ltd. vs Neeraj Chaudhary & Ors. Case No. 51/SA/DM**

- The lender had sought actual physical possession of the mortgaged immovable properties.
 - In the case said case, vide order dated 17.12.2019, the handover of possession of units no. C-58-GF (the unit in the present complaint) and C-58-FF was granted and a duty magistrate was appointed to deliver the possession. In compliance with the order dated 17.12.2019, the physical possession was given on 23.01.2020.
- ii. **Complaint under Recovery of Debt and Bankruptcy Act, 1992 titled as Pheonix ARC Pvt. Ltd. vs BPTP Limited & Ors Original Application No. 112 of 2020**
- That thereafter, the Lender had filed a case under Section 19 of the Recovery of Debt and Bankruptcy Act, 1992 (the "RDB Act") titled as Pheonix ARC Pvt. Ltd. vs BPTP Limited & Ors. in original application no. 112 of 2020.
 - The complainants were defendants no. 3 and 4 in the said OA. It is a matter of fact and record that the complainants are aware of these proceedings for which, vide order dated 12.11.2020 service by publication was ordered to be made, which was successfully made and thereafter, representation was made by the complainants (D3 and D4 therein) through Adv. Pawan Malik as evident from order dated 17.08.2022.
- xvii. That during the pendency of the OA no. 112 of 2020, the complainants were duly explained the forfeiture calculations arising from the defaults of the complainants and the cancellation of the unit. It was explained and agreed between the parties that since the lenders outstanding exceeded the returnable amount post forfeiture, hence, the respondents shall fully and finally settle the claim of the lender as against the unit. Hence, the respondents and the lender fully and finally settled the matter against the unit and executed a settlement deed dated 29.03.2023. That in accordance with the settlement deed, Phoenix issued a NOC for the creation of third-party rights.
- xviii. That the relief sought by the complainant is infructuous. The complainant seeks physical possession of the unit in question, the possession of which

was firstly taken by the lender due to the continuous default of the complainant, as evident from the order dated 17.12.2019 under case no. 51/SA/DM, after which, the respondents had no other option but to settle the claim of the lender in respect to default of the complainants under all ten loan accounts, including the account with respect to the unit in question. That thereafter, third-party rights have been created.

- xix. That moreover, after filing the present case, the complainant has also filed a suit for declaration with consequential relief of permanent injunction in case bearing no. **CS/2583/2023 titled as Neeraj Chaudhry & Anr vs BPTP Limited & Ors** before Ms. Pragati Rana Civil Judge, Junior Division, Gurugram. The following reliefs are being claimed by the complainants:-

a) a decree of declaration may kindly be granted that the plaintiffs are the allottees of the suit property and the defendants have no right, title or interest in the allotment rights of the plaintiffs;

b) a decree of declaration that the alleged agreement/MOU dated 28.03.2023 Annexure P-17 as legal, null and void and not binding on rights of plaintiffs;

c) a decree of declaration that the allotment letter dated 03.07.2023 Annexure P-16, application form Annexure P-16 is Regal, null and void and not binding on the rights of the plaintiffs;

d) Decree of permanent injunction restraining the defendants from dealing in the suit property in any manner whatsoever including handing over of the possession to anybody except the plaintiffs;

e) during the pendency of the present suit, the operation of MOU/settlement agreement dated 28.03.2023 Annexure P-17, allotment letter dated 03.07.2023 Annexure P-15, application form Annexure P-16 may kindly be stayed.

That similar relief of possession is claimed before this Authority also. That the complainants are themselves engaging in forum shopping which should not be allowed and the present complaint should be dismissed at the very outset.

- xx. That in accordance with the above, the complainants are not an allottee anymore and have no right, title, or lien on the unit in question. That despite having complete knowledge of the same and of all the proceedings that have underwent (undergoing) before the District Court, the DRT, and/or the

police complaint, the complainants willingly, voluntarily chose to approach this Authority with unclean hands without shredding an iota of information about the same and have suppressed material facts, which, under no circumstance whatsoever, be allowed by this Authority and deterrents in such circumstances need to be evidently established to uphold the importance of access to justice to truthful litigants and against the judicial process being used as an instrument to create oppression.

- xxi. That similarly, the present case should be dismissed with heavy costs against the complainants. That it needs to be additionally noted that no cause of action remains when the matter against the unit has been fully and finally settled.

E. Written submission made by the complainants as well as respondent no. 1

11. The complainants and respondent no. 1 have filed the written submissions on 30.04.2025 and 25.04.2025 respectively which are taken on record. The additional facts apart from the complaint or reply have been stated by the parties in written submissions are mentioned below: -

E.1 Written submission of the complainants

12. The complainants have filed the written submission on 30.04.2025, and made the following submissions along with additional reliefs sought: -
- That the complainants had booked a total of 10 units with respondents in the year 2015, specifically on 03.03.2015 and 19.03.2015, in the project titled "Astaire Garden" situated at Sector 70A, Gurgaon, Haryana. Pursuant thereto, floor buyer's agreements (FBAs) were executed between the parties on 05.03.2015 and 24.03.2015, respectively, in relation to the said units.
 - That the total consideration for eight (8) out of the ten (10) units was a sum of Rs.12,000,000/- each, which amount includes the basic sale price (BSP), development charges (DC), recreational facility registration charges (RFRC), and power backup installation charges (PBIC).
 - Further, the consideration for the remaining two (2) units, specifically unit no. C-58 (ground floor) and unit no. C-58 (first floor), was Rs.1,25,43,383/- and Rs.1,02,08,023/-, respectively, inclusive of BSP, DC, RFRC, and PBIC.
 - That the complainants had opted for a possession linked payment plan, under which ninety percent (90%) of the total consideration was required to be paid up front, and the balance ten percent (10%) was payable at the time of the offer of

possession, in accordance with the terms and conditions set out in the respective allotment letters dated 03.03.2015 and 19.03.2015 for all the units.

- That in accordance with the terms and conditions of the respective floor buyer's agreement(s), the complainants duly paid ninety percent (90%) of the total consideration in respect of each unit, partly from their own personal resources and partly by availing loan facilities from a financial institution, namely Bajaj Finance Ltd. The balance ten percent (10%) of the total consideration was payable by the complainants at the time of offer of possession, in accordance with the terms and conditions of the floor buyer's agreement(s) (FBA). The respondents had committed to offer possession by 04.09.2016 for the first eight (8) units and by 23.09.2016 for the remaining two (2) units. Despite the complainant's full and timely compliance with their financial obligations under the floor buyer's agreement(s), the respondents failed to offer possession of the Units within the stipulated time frame as committed.
- That no default whatsoever occurred on the part of the complainants prior to the committed dates of possession. The complainants paid their equated monthly instalments (EMIs) towards the loans availed from the financial institution up to 30.11.2017, which is over fifteen (15) months beyond the respondents committed possession dates.
- That the respondent's failure to deliver possession within the stipulated time period has resulted in grave financial hardship to the complainants, who have already paid substantial amounts to both the respondents and the lending financial institution. That the complainants have always been, and continue to remain, ready and willing to pay the balance ten percent (10%) of the total consideration, subject to appropriate adjustment of the DPC in accordance with the contractual terms.
- That the respondent no. 1 assertion of having offered possession on 09.12.2019 is false; no such offer was made to the complainants. Even if possession had been offered on 09.12.2019 (which is unsubstantiated), it would still be 39 months beyond the contractual dates; thus, DPC must be adjusted against the outstanding balance, and no evidence has been provided to quantify the same.
- That the respondents have not provided any computation indicating the net amount due from the complainants after DPC adjustment as of 09.12.2019. That legal offer of possession has not been offered till date by the respondents; DPC must be calculated through the actual date of valid offer of possession.
- That the complainants have as on date, paid a cumulative amount of Rs.65,769,934/- towards the total consideration of the subject unit(s), from their own pocket. This amount comprises direct payments made to the respondents by way of down payments, as well as payments made to the financial institution(s) towards EMI's and principal repayments on the loan facility availed for the purpose of acquiring the said units.

Absence of a Cancellation Notice/Cancellation Letter

- That it is submitted that no cancellation notice has ever been served upon the complainants till date. Whereas the respondents, in their reply dated 06.02.2024,

refer to a cancellation letter dated 03.01.2020, which appears to be an internal communication between the respondents and the asset reconstruction company (ARC) and not a formal communication with the complainants. Therefore, no cancellation letter has ever been issued to the complainants.

Validity of the alleged cancellation letter dated 03.01.2020

- That the respondents, in their reply dated 06.02.2024; attempt to mislead the Authority by claiming that the subject units were cancelled by the lender on 03.01.2020. However, the following facts categorically demonstrate that no such cancellation took place:
- That the respondents have failed to attach any documentary evidence of any cancellation issued to complainants in their reply.
 - That no proof of refund of loan amount to the financial institution/ARC in January 2020 has been provided by the respondents after the alleged cancellation on 03.01.2020.
 - That if the cancellation had truly occurred on 03.01.2020 and funds had been returned to the financial institution/ARC, then there would be no need for the subsequent settlement agreement dated 29.03.2023 (after 39 months) between the respondents and the ARC Company, this undermines the cancellation claim.
 - That in the Civil Suit No. 474 of 2020 (filed on 12.02.2020), the respondents did not mention any such cancellation or issuance of any cancellation letter/notice served to the complainants in the entire petition.
 - That all the replies filed in OA/112/2020 (04.02.2020), the respondents did not mention any such cancellation or issuance of any cancellation letter/notice served to the complainants in any of their replies.
 - That an alleged reminder notice dated 14.09.2020, addressed to the complainants confirms that no cancellation occurred on 03.01.2020.
 - That a valid cancellation (03.01.2020) would preclude a subsequent settlement over the same unit, as evidenced by the agreement dated 29.03.2023.
 - That the respondents submitted a list of 821 existing customers of "Astaire Garden, Sector 70A, Gurgaon" to the Department of Town and Country Planning on 23.03.2021. The Complainants' names are listed at (Serial Nos. 349 to 356), and (359&360), reaffirming their status as active allottees as of that date.

Illegal alienation of units despite status quo Order

- That during the pendency of the present matter, and despite a clear status quo order dated 09.08.2023 passed by this Authority, Respondent No.1 has surreptitiously alienated the subject units in favor of its sister concerns and certain dummy individuals. These transactions, herein referred to as "sham alienations," appear to be strategic attempts to frustrate the proceedings and create artificial barriers to execution of possession orders in favor of the complainants. This deliberate act of defiance undermines the Authority of the adjudicatory process and warrants strict action.

Violation of Interim Orders Dated 09.08.2023 and Liability for Contempt

- That the respondent no. 1 has wilfully, deliberately, and contumaciously violated the interim orders dated 09.08.2023 passed by this Authority. Such wilful non-compliance renders respondent no. 1 liable for contempt of the authority and its lawful directions. The said interim order, in unequivocal terms, directed as follows: *"The Respondents are directed to maintain status quo qua the apartments in question till the next date of hearing."*
- However, despite the binding nature of the above directive, Respondents had repeatedly and fraudulently engaged in actions that are in direct contravention of the said order, as demonstrated below:
- That the respondents have exhibited blatant and wilful disregard for the interim directions issued by this Authority and have persisted in their fraudulent conduct, in direct violation of the binding orders, thereby undermining the sanctity and authority of this Forum.
 - That on 10.08.2023, merely one day after the issuance of the status quo order dated 09.08.2023; the respondents executed a registered conveyance deed bearing Vasika No. 5654 before the Office of the Sub-Registrar, Badshahpur, and Gurugram, in respect of one of the subject units.
 - That on the very same day, i.e., 10.08.2023, the respondents also executed a registered agreement to sell, bearing Vasika No. 5658, again involving one of the subject units.
 - That a third act of violation occurred on 19.10.2023, when the respondents executed yet another registered conveyance deed, bearing Vasika No. 9915, again in clear breach of the interim status quo order.
- That the aforesaid repeated and deliberate violations clearly establish the respondent's conscious and intentional defiance of the interim order dated 09.08.2023. Such conduct amounts to contempt of this Authority and warrants the initiation of appropriate contempt proceedings against the respondents under the applicable provisions of law.

Non-Compliance of Order Dated 22.10.2024 and Concealment of Material Facts

That during the proceedings held on 22.10.2024, this Authority was pleased to issue a specific and unequivocal direction in the following terms:

"The counsel for the respondents were directed to file an affidavit with complete details of alienation of the unit with proper date, amount received since its first allotment till date."

That despite the clarity and binding nature of the aforesaid directive, respondent No. 1 filed an affidavit dated 07.01.2025, which was submitted before this Authority on 09.01.2025. However, the said affidavit is patently non-compliant and materially deficient, as it fails to disclose the requisite and directed particulars, including complete dates and amounts received in relation to the alienation of the unit(s) from the date of first allotment till date of filing of the affidavit.

That this act of non-compliance was duly brought to the notice of this Hon'ble Authority by the learned counsel for the Complainants during the proceedings held on 11.03.2025, wherein it was specifically submitted as under:

"The affidavit submitted by the Respondents is not in accordance with the details that were directed to be furnished by the Hon'ble Authority vide order dated 22.10.2024."

That the respondents have wilfully and blatantly failed to comply with the directions contained in the order dated 22.10.2024 passed by this Authority, which explicitly mandated full and transparent disclosure regarding the alienation of the subject units, including the dates of such alienation and the amounts received since the first allotment of the units in question till date of filing of the affidavit. Despite the unequivocal nature of the said order, the respondents have:

- Failed to provide complete and accurate details of all transactions undertaken in relation to the subject units;
- Omitted to disclose the specific dates and amounts received from the inception of the respective allotments;
- Attempted to mislead this Hon'ble Authority by submitting an incomplete, evasive, and non-compliant affidavit dated 07.01.2025, filed on 09.01.2025; and
- Failed and neglected to file a reply to the complainant's application under Section 39 of the Act, 2016, which was filed on 13.09.2024, despite clear directions to submit a response within a period of three (3) weeks. (Order dated 22.10.2024) Such conduct, on the part of the respondents, amounts to deliberate suppression of material facts, wilful disobedience of the orders of this Authority, and constitutes a gross abuse of the process of law.

No relief granted in respect of the subject units/properties in the Ex parte Arbitration Award secured by Financial Institution.

- That the Financial Institution proceeded to initiate arbitration proceedings against the complainants in violation of the provisions of the Recovery of Debts and Bankruptcy Act (ROB Act). Despite the jurisdictional infirmity, an ex parte Arbitration Award dated 29.05.2018 and 30.05.2018 was obtained. Nevertheless, it is significant that no relief was granted in the arbitration proceedings in respect of the subject units/properties. Consequently, the Financial Institution's claim over the said properties stands extinguished.

Memorandum of Understanding (MOU) dated 28/30.06.2018 between the Complainants and the Financial Institution

- That the complainants entered into a one-time settlement/memorandum of understanding (MOU) dated 28/30.06.2018 with the Financial Institution, whereby a consolidated settlement amount of Rs.9,00,00,000/- was agreed upon in full and final settlement of all outstanding loan accounts pertaining to the Complainants, in respect of eleven (11) immovable properties.
- It was mutually agreed between the parties that the Financial Institution would release individual units upon receipt of partial payments towards the overall

settlement amount. Specifically, each unit/floor was to be released upon deposit of Rs.70,00,000/-. Out of the 11 properties, 10 (ten) units/floors in question were agreed to be released against a cumulative consideration of Rs.7,00,00,000/-, as per the terms of the MOU.

That in compliance with the terms of the said MOU, the complainants deposited an aggregate sum of Rs.1,11,30,315/- with the Financial Institution during the period between 30.06.2018 and 06.11.2018.

That on 28.07.2018, with the intent of facilitating the disposal of the aforesaid properties, the complainants approached respondent no.1 (the Builder) seeking details of the outstanding dues as well as a tentative timeline for the delivery of possession of the units. However, respondent no.1 refused to provide any statement of account or cooperate with the complainants in this regard.

It is pertinent to mention that on the same date, i.e., 28.07.2018, the Financial Institution issued a letter addressed to both the complainants and respondent No.1, reaffirming the continuation and binding nature of the existing Tripartite Agreement executed between the parties.

Absence of Statutory Notice under Sections 13(2) and 13(4) of the SARFAESI Act, 2002 by the Assets Reconstruction Company

- That it is respectfully submitted that no notice under Section 13(2) or Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") was ever issued or served upon the Complainants by the Assets Reconstruction Company (ARC) after the loan account in question was assigned to it pursuant to an Assignment Agreement dated 03.12.2018. It is further submitted that despite acquiring the debt from the original Financial Institution, the said ARC has failed to initiate or pursue any proceedings in compliance with the mandatory provisions of the SARFAESI Act against the Complainants in relation to the subject properties/units.
- Additionally, it is relevant to note that neither the original Financial Institution nor the Assets Reconstruction Company has, at any point in time, instituted any proceedings under the Recovery of Debts and Bankruptcy Act, 1993 before any Debts Recovery Tribunal, wherein the Complainants have been impleaded as Defendants.

Proceedings in OA/112/2020 before DRT-11, Delhi

- That with respect to OA/112/2020 pending before the Hon'ble Debt Recovery Tribunal-II, Delhi, it is respectfully submitted that the Complainants were merely impleaded therein as Proforma Defendants, with no substantive reliefs claimed against them. Furthermore, the said proceedings were unconditionally withdrawn by the concerned Financial Institution/Asset Reconstruction Company on 29.12.2023. Accordingly, the said Original Application (OA) stands disposed of and hold no bearing on the present proceedings. It is submitted that any reference to OA/112/2020 is misconceived and cannot be relied upon to prejudice or dilute the Complainant's rights in the present matter.

Transactions between Respondents and Financial Institution/ARC without Complainants' Participation are Invalid

- That it is pertinent to mentioned here that one civil suit was filed by respondents titled "*BPTP Ltd. & Ors. Vs Phoenix ARC Pvt. Ltd. & Others*" wherein the complainants were arrayed as defendant no.2 and 3. In the said suit a statement dated 29.3.2023 was recorded by the Court whereby a settlement agreement dated 28.3.2023 was submitted as Exhibit C-1 and prayer was made to dispose of the said matter in terms of the settlement. The said settlement has been arrived at qua the property belonging to the complainants and the complainants have no knowledge about the said settlement having been arrived at between respondents herein and ARC Company. Despite the fact that no relief qua the suit property was granted to the financial institution in the arbitration proceedings, yet an illegal agreement has been entered into between respondents and ARC Company qua the complaint property belonging to the Complainants without notice to the complainants and without making the Complainants a party therein in a fraudulent and clandestine manner.

That any purported settlement or transaction undertaken between the respondents and the Financial Institution/Asset Reconstruction Company (ARC) in the absence of participation and consent from the complainants is violate of the principles of natural justice. Such unilateral transactions cannot prejudice or bind the rights and interests of the complainants.

Allegation of Parallel Remedy Is Baseless

- That the allegation of the respondents to the effect that the complainants have availed multiple remedies before various judicial forums is completely misconceived, misleading, and is hereby unequivocally denied. It is submitted that, apart from the present proceedings before this Authority, the complainants have only instituted a civil suit seeking the following reliefs:
- a. A declaration that the impugned agreement dated 28.03.2023 is null, void, and not binding on the complainants'; and
 - b. Cancellation of the purported third-party rights, which were fraudulently created by respondents and were specifically alleged before this Authority during the proceedings held on 09.08.2023.
- That the allegation made by the respondent no.1 regarding the existence of any overlapping or parallel claim for relief is wholly misconceived and devoid of merits. It is respectfully submitted that **there** exists no such overlapping or parallel claim as falsely alleged by the respondent no.1.

Issuance of legal notice dated 21.05.2022 and non-response by the respondents

- That on 21.05.2022, the complainants, through their counsel, issued a legal notice to respondents, calling upon them to
- a) Hand over possession of the subject units/properties, and
 - b) Pay interest at the rate of 12% per annum, compounded monthly, after adjusting the amount payable upon possession.

It is pertinent to submit that, despite receipt of the said legal notice, neither respondents had responded to the said communication to date, thereby

demonstrating a complete disregard for the legitimate demands of the complainants.

Whether the Respondents Have Violated the Provisions of the Real Estate (Regulation and Development) Act, 2016 ("the Act")

- That it is respectfully submitted that the Respondents have blatantly violated several provisions of the Real Estate (Regulation and Development) Act, 2016, as enumerated below
 - That the complainants booked their respective floors/units on 03.03.2015 & 24.03.2015, with the due date of possession being 04.09.2016 & 23.09.2016. The respondents, however, failed to deliver possession within the stipulated period. Subsequently, an alleged offer of possession was issued mechanically and fraudulently on 09.12.2019, incorporating several arbitrary and illegal charges. Notably, this purported offer was neither served upon the complainants' nor valid in law, particularly in light of the fact that the project was not registered under RERA from 01.05.2016 to 21.09.2021, despite the mandatory applicability of the Act from 01.05.2016. The respondents conduct constitutes a clear and wilful breach of the Act.
 - **Violation of Section 11:** The respondents have failed to provide accurate and updated information regarding the progress and status of the project, thereby breaching their statutory duty to ensure transparency.
 - **Violation of Section 12:** False representations were made regarding the completion timeline and delivery of amenities. The complainants were misled by these misrepresentations into making their respective investments.
 - **Violation of Section 14:** The respondents unilaterally and without consent of the complainants increased the super area of all the units in question, which is impermissible under law.
 - **Violation of Section 18:** The respondents failed to hand over possession within the agreed timeline, making the complainants entitled to refund with interest as per Section 18(1) of the Act. Further, the imposition of arbitrary charges, without contractual or statutory backing, amounts to an unfair trade practice.

Maintainability of Reliefs Sought by the Complainants

- That it is respectfully submitted that the reliefs sought by the complainants are fully maintainable and are strictly in accordance with the provisions of the Act, 2016. The complainants have sought reliefs including but not limited to refund, compensation, DPC, and penalties, all of which are specifically envisaged under the statutory framework of the Act. The respondents have committed multiple violations of the provisions of the Act, as elaborated in detail in the preceding sections of these written arguments. The same are not reiterated herein for the sake of brevity.
- That the complainants have suffered immense losses and hardship owing to the delay in possession, lack of transparency, imposition of arbitrary charges, and overall failure of the respondents to fulfil their contractual and statutory obligations. Further, the acts and omissions of the respondents amount to fraudulent conduct and adoption of unfair trade practices, attracting the penal and compensatory provisions of the Act.

In view of the above, and keeping in mind the object and intent of the Act to protect the interests of homebuyers and promote transparency and accountability in the real estate sector, the reliefs sought by the Complainants' are not only maintainable but are fully justified in law and on facts.

It is further submitted that the respondents, by submitting false affidavits, concealing material information, and wilfully misleading this Authority, have acted in bad faith and in clear violation of the solemnity of these proceedings. Such conduct calls for strict action under the Act and relevant legal provisions.

It is humbly submitted before the Authority that the complainants reserve its right to counter and file additional written submissions against any contradictory averments made by the respondent in the additional written submissions filed by them and made the following prayed of this Authority may kindly be pleased to:-

- Direct the respondents to pay delayed possession charges along with interest at rate prescribed under Act, from the respective due dates of possession i.e., 04.09.2016 (for 8 units) and 23.09.2016 (for 2 units) until the issuance of a valid offer of possession in accordance with law;
- Direct the respondents to immediately hand over physical possession of the complainants units;
- Restrain the respondents from raising any illegal or unjustified monetary demands in relation to the units;
- Restrain the respondents from creating any third-party interests /rights of the subject units;
- To declare that no valid cancellation complainants units has taken place and direct maintenance of status quo in respect of the said units;
- To quash the arbitrary demand of the respondents, which are not part of the floor buyer's agreement (FBA);
- To restrain the respondents from raising any demand for maintenance charges until valid physical possession of the unit is handed over;
- To issue a show cause notice to the respondents for violation of the terms of the RERA registration certificate and provisions of the Act;
- To issue a show cause notice to the respondents for violation and contempt of the order dated 09.08.2023 passed by this Authority;
- To issue a show cause notice to respondents for submitting false affidavits and perjurying themselves on oath before this Authority;
- To issue a show cause notice to the respondents for wilfully misleading and concealing material facts from this Authority;
- To constitute a high-level committee to investigate and submit a report on the contempt of the order dated 09.08.2023, including misrepresentation on oath and deliberate attempts to mislead this Authority;
- To impose exemplary penalty upon respondents for violations of the provisions of the Act and the conditions the registration certificate;
- To pass such and orders as this Authority may deem just, fit and proper in the interest of justice, equity and good conscience.

E.I Written submission of the respondent no. 1

13. The respondent no. 1 has filed the written submission on 25.04.2025, and thereafter objections to the written submission/arguments filed on behalf of the complainants was filed on 13.05.2025 and made the following submissions:-

- The respondent no. 1 seeks the liberty of this Authority to put forth the submissions, in a tabular form along with dates of occurrence of the event and accompanying document referred in the pleadings. It is most humbly submitted as follows:-

Dates	Events	Relevant Annexures
03.03.2015	Booking Application submitted by the Complainants with the Respondent for booking of Floors/ Units in the Project namely "Monet Avant Floors". It is pertinent to mention that the Complainants booked a total of 10 Units in the Project.	Annexure R/1 @ Pg. 37 - REPLY
03.03.2015	The Allotment Letter was issued to the Complainants	Annexure 1 @ Pg. 18 of Complaint Annexure R/2 @ Pg. No. 60-REPLY
05.03.2015	Floor Buyer Agreement was executed between the Parties. Cl. 2.2 - Commitment Period (18 months from the date of execution of FBA) Therefore, the due date of possession was 05.03.2017. Cl. 7 - Possession Clause - Possession to be offered within commitment period. Cl. 8.1 - in case of default of the Complainants, it was agreed that the Respondent No.1 shall have the right to terminate the Agreement, forfeit the earnest money, non-refundable amounts and other amounts of such nature and it was further agreed that after cancellation the Complainants shall have no right in the Unit and the Respondent shall have the right to sell the unit. <i>It is noted herein that in order to misguide the Hon'ble Authority, the Complainants at Pg. No. 6 of the Complaint alleges that FBA has not been executed.</i>	Annexure R/3 Pg. No. 62 of the Reply @ Pg. 76 of Reply.
10.03.2015	That the Complainants required monetary assistance to make the payment against the Sale Consideration of the Unit and hence availed a housing loan from Bajaj Finance by mortgaging the said Unit. In view of which Bajaj Finance disbursed an amount of Rs.89,47,196/- against the loan. Accordingly, a Tripartite Agreement was executed between the Parties and Bajaj Finance with following clauses duly agreed.	@ Pg. No. 21 of Complaint Annexure R-4, Pg. No. 89 of the Reply

	<p>Clause 4 - The Complainants were to make timely payments of Pre-EMIs/EMIs.</p> <p>Clause 6 - in case of default of the Complainants, the Respondent on instruction of the Lender shall cancel the allotment of the Unit and refund the entire amount funded by the Lender directly to Lender. Further, the Respondent shall have right to recover/forfeit the earnest money.</p> <p>Clause 7 - even in case of Cancellation of the allotment/surrender/withdrawal from the project for any reason whatsoever, the Complainants shall make the payment of EMIs till the refund of the loan amount.</p> <p><i>Since the Units came to be mortgaged with the Financial Institution, a lien thus came to be created in the books of the Respondent under the name of the Financial Institution, qua the said Units.</i></p>	
16.06.2015 & 20.07.2015	<p>In order to transparently communicate to the complainant with regard to the stages of construction following letters were sent to the Complainant by Respondent No.1 (BPTP) stating that:</p> <p>Phase 1 - Delivery Sept 2016 (B Block, 60Units)</p> <p>Phase 2 - Delivery Dec, 2016 (E Block, 179 Units)</p> <p>Phase 3 - Delivery March, 2017 (C Block, 159 Units)</p>	Annexure III @ Pg 26 & 30 of Complaint
01.02.2018	<p>Due to non-payment of the dues by the Complainants, the Complainants were declared as 'Non-Performing Assets' by the Financial Institution.</p>	
14.02.2018	<p>Occupation Certificate was received by the Respondent No. 1 for the Project</p>	Annexure R-7, Pg. No. 135
30.06.2018	<p>The complainant defaulted on following clauses of MOU entered between the Complainant and the Financial Institutional (Baja Finance) for settlement of debt.</p> <p>Unnumbered Recital 7 - Buyer acknowledges dispute arose between the Financial Institution and Buyer.</p> <p>Unnumbered Recital 8 - Buyer acknowledges that they had defaulted in paying instalments.</p> <p>Unnumbered Recital 9 - acknowledgment that Financial Institution has initiated legal proceedings against the Complainants including SARFAESI proceedings. The possession of the properties mentioned in Schedule III has already taken by the Financial Institution.</p> <p>Cl.1 Buyer acknowledged the legal activities initiated against Loan including SARFESI activities.</p> <p>Cl 2 - Buyer acknowledges SARFEASI Notice.</p> <p>Cl 3 - Buyer agreed to resolve and settle all the dispute and deposit Rs. 9 Crores as per Schedule IV of the MOU. <i>(It is</i></p>	@ Page 34 of Complaint

	<p><i>noted herein that the Complainant has not annexed the Schedule IV with the Complaint).</i></p> <p>Cl 6 – If Buyer fails to deposit settlement amount, the MOU shall be revoked and Financial Institution shall have the right to sell security interest in its possession and entire amount paid till date shall be forfeited.</p>	
	<p>Complainant despite agreeing to pay the amounts as mutually decided in the MOU dated 30.06.2018, the Complainants miserably failed to make payments to Financial Institution.</p> <p><i>The Complainants themselves acknowledge a At Pg. No. 7 of the Complaint, that they have failed to pay the EMIs to the Financial Institution.</i></p> <p>Further, it is also humbly submitted that there was no understanding between the parties in the MoU that the loan amounts repayment would be contingent upon the sale of the Units by the Complainant. It is also pertinent to note that the cancellation of the units was done by the Financial Institution itself and the Respondent No. 1 had no part to perform except acting upon the instructions of the Financial Institution in compliance of the agreed terms of the Tripartite Agreement.</p>	
03.12.2018	<p>Pursuant to Section 5 of the SARFAESI Act, the Financial Institution can transfer any financial asset to asset reconstruction company. Accordingly, Bafa Finance <i>vide an Assignment Agreement dated 03.12.2018</i> transferred 3 loan accounts and its security interest to Phoenix ARC Pvt. Ltd. among which one of them were of Complainants.</p>	Annexure R-5, Pg. No. 94 of the Reply
30.05.2019	<p>The assignment of debt/loan in favor of the Phoenix ARC was intimated to the Complainants and the Respondent No.1 vide Letter dated 30.05.2019.</p>	Annexure R-6 @ Pg. 124 of the Reply
09.12.2019	<p>Offer of Possession issued for the Unit</p>	Annexure R-9 @ Pg. No. 141 of the Reply
	<p>The lender had filed the following cases in lieu of the loan account of the Complainants where the unit in question was kept as a security:</p> <ol style="list-style-type: none"> Phoenix ARC Pvt. Ltd. Vs. Neeraj Chaudhry & Ors. (Complaint under SARFESI Act, 2002) Phoenix ARC Pvt. Ltd. Vs. BPTP Ltd. & Ors (Complaint Under Recovery of Debt & Bankruptcy Act, 1992) 	
17.12.2019	<p>Hon'ble Court of Sh. Amit Khatri, District Magistrate, Gurugram in Case no. 51/SA/DM titled as Phoenix ARC Pvt.</p>	

	<p>Ltd. vs Neeraj Chaudhary & Ors. passed direction to handover of two Units bearing No. C-58, Ground Floor, and C-58 First Floor, to the Lender.</p> <p><i>The said Order of the Ld. DM was duly intimated to the Complainant and Respondent no.1 by the Lender vide Letter dated 24.01.2020.</i></p>	<p>Annexure R-13 @ Pg. 190 of the Reply</p>
03.01.2020	<p>Complainants continued to default towards loan repayment which finally led to the cancellation of the Unit on 03.01.2020 by the Lender (in exercise of Clause 5, 6, 10 and 11 of the TPA) and refund was sought by the Lender.</p>	<p>Annexure R-10 @ Pg. No. 160 of the Reply</p>
12.11.2020	<p>Complainant was part of all the hearings including below: In OA/112/2020 titled Phoenix ARC Pvt. Ltd. Vs. BPTP Ltd. & Ors, the Hon'ble DRT-II, Delhi issued notice to present Complainants (Defendants 3 and 4 before the Ld. DRT) to be served through publication in newspaper. Order dated 12.11.2020 is annexed herewith as Annexure -1 After receipt of Notice, the present Complainants duly appeared before the Ld. DRT and participated in the proceedings conducted before the Ld. Tribunal. The presence of the Complainants can be verified from the Order dated 17.08.2022 wherein the attendance of the Ld. Counsel on behalf of the Complainants herein are recorded in the Order. Order dated 17.08.2022 is annexed herewith and marked as Annexure - 2.</p>	
28.03.2023	<p>Settlement agreement executed between Respondent and Phoenix (herein after referred to as Lender) before DRT due to default in loan repayment by the Complainant: That owing to the multiplicity of wasteful litigation, and no forthcoming response from Complainants, qua repayment of loans, as had been advanced, the Respondent as well as the Lender decided to amicably resolve the said disputes.</p> <p>Accordingly, Settlement Agreement was executed during the pendency of proceedings before the Ld. DRT-II between the Respondent No.1 and the Lender, in view of which the Respondent No.1 re-paid an amount of Rs.8,85,00,000/- to the Lender as full and final settlement amount owing to the defaults of the Complainants.</p> <p>Further, in lieu of the said repayment, the lien as had been created on the said Units stood released. Also the Lender</p>	<p>Annexure R/16, pg. no. 218 of the Reply</p>

	<p>issued NOC's to the Respondent No.1 qua the said Unit, as had been originally allotted to the Complainants, but the said allotment stood cancelled at the request of the Lender owing to the inability of the Complainants to repay the said loan.</p> <p>Moreover, it was also categorically agreed that upon such settlement being executed, the financial institution shall withdraw all cases, whatsoever, as had been filed against the Respondent, and all the rights as enjoyed by the financial institution under the concerned subject tripartite agreements, concerning the Respondent shall stand duly extinguished, however, the financial institution shall be at liberty to exercise all its rights and seek recovery of its claims, if any, against the Allottees/Complainants.</p>	
18.04.2023	<p>Third party rights creation on the subject unit post settlement with the Lender by the Respondent:</p> <p>After execution of Settlement Agreement and upon receiving No Objection Certificate from the Lender, the Unit was booked by a subsequent allottee Ms. Deepa Tripathi (2nd Allottee) and as on date the Unit in dispute stands allotted to Ms. Deepa Tripathi.</p>	Also mentioned in the Affidavit filed.
August 2023	<p>Filing of frivolous civil suit for possession of the subject unit by the complainant before the Gurugram Court:</p> <p>Complainants filed a subsequent Civil Suit before the Hon'ble Gurugram District Court bearing no CS/2546/2023 titled Neeraj Chaudhary Vs. BPTP Ltd. & Ors</p>	
29.12.2023	<p>The OA No.112 of 2020 before DRT was dismissed as withdrawn in view of the Settlement Agreement dated 28.03.2023.</p>	Annexure A/1 @ 4 of Section 39 application filed by the Complainants
	<p>Frivolous application filed by the Complainant for recalling of order passed under OA No. 112 of 2020</p> <p>Subsequent to the disposal of the OA No. 112 of 2020, the Complainants have filed Miscellaneous Application bearing No. 127 of 2024 before the Ld. DRT-II for the recall of Order dated 29.12.2023, wherein the claims of the Lender were duly cleared off by the Respondent No.1 herein. This is again another round of vexatious litigation against the Respondent No. 1.</p> <p>The said Application is next listed for hearing on 04.06.2025.</p>	

- **FORUM SHOPPING BY COMPLAINANTS:-** From above facts it is conclusively proved that the complainant has been misusing various judicial forums by filing frivolous complaints malafidely, thereby, wasting the

precious time and efforts of Hon'ble Courts. They have filed multiple complaints/applications against the respondent before various judicial forums agitating the same issue and the same cause of action in order to gain illegitimate monetary benefits from the respondent no.1. Also, the complainants are parties to all the complaints that have been filed by the lender to recover their claims and having due knowledge of all the litigations. In fact, the respondent no.1 have acted within four corners of law despite their being default of loan by complainants. Moreover, respondents have refunded the entire amount, as was payable to the Lender, stands completely absolved of its liabilities, and the lien on all the 10 units also stands duly released. Now, after happening of all the events, the complainants have themselves again with a malafide intention filed a Miscellaneous Application against the Lender and the respondent No.1 before the Hon'ble Debt Recovery Tribunal – 2, Delhi to re-agitate the matter.

- It is pertinent to mention that both the complainants (i.e., Mr. Neeraj Chaudhry & Mrs. Monia Chaudhry) and the company, Sapphire Digital Printer Private Limited, where they serve as directors, have a history of frequent litigation and are involved in multiple ongoing criminal cases concerning financial fraud amounting to Crores of rupees. These cases have been filed by various banks against them and are currently pending before different legal forums, including the High Court, Debt Recovery Tribunal etc.
- That the respondents reserves its right to counter and file additional written submissions against any contradictory averments made by the complainants in the written submissions filed by them.
- Hence, in view of the aforementioned facts and submissions, it is most humbly submitted that the Complainants are habitual litigants raising frivolous claims/reliefs from various courts despite proven defaults of financial obligations towards the bank and attempting to get undue gains by grabbing property worth Crores of rupees. Hence, the present Complaint is not maintainable being devoid of any merits and liable to be dismissed with a heavy cost for this frivolous litigation before Authority.

14. Objection filed by the respondent no. 1 upon the written submission filed by the complainants and made the following objections:-

➤ **INTRODUCING NEW FACTS/DOCUMENTS AT THE STAGE OF PRONOUNCEMENT OF THE FINAL ORDER IS AGAINST THE PRINCIPLE OF NATURAL JUSTICE**

- Facts/Documents with respect to arbitration proceedings, ex-parte arbitral award between the complainants and the Financial Institution not part of original pleadings
 - a. That the complainants, vide their written submissions/arguments, introduced new facts and documents with respect to the arbitration

proceeding between the complainants and the financial institution and the ex-parte arbitral award. The complainants nowhere in their complaint, nor during the course of the arguments, have ever mentioned anything about the arbitration proceedings between the complainants and the Financial Institution.

- b. That the complainants are trying to mislead the Authority by stating that no relief has been granted in the arbitration proceedings in respect of the subject units. That from a mere perusal of the Arbitral Award, it is evident that the Financial Institution has brought on record the details of transaction/loan taken by the complainants to purchase the units in dispute and has also brought on record the fact that due to continuous failure of the complainants, the Financial Institution vide loan facility notice recalled the loan granted to the complainants. Despite being obligated to return the amounts, the complainants failed to fulfil their obligations. That the Ld. Arbitrator, after considering the documents brought on record, had passed the award directing the complainants to pay the outstanding loan amount with interest to the Financial Institution.
- c. That the Complainants have not mentioned whether the said arbitral awards, as mentioned in the written submissions/arguments of the complainants, have been challenged by them under Section 34 of the Arbitration and Conciliation Act, 1996. That bringing on record said fact at the stage of pronouncement of final order is prejudicial to the rights and interests of the respondent no. 1. Therefore, the new facts and documents with respect to arbitral proceedings between the complainants and the Financial Institution cannot be taken on record at the stage of pronouncement of final order.
- d. It is apposite to mention herein that Order VII Rule 14 of the Code of Civil Procedure mandates that the plaintiff/complainant must produce all documents relied upon in support of their claim when filing the plaint/complaint, and must also list any other documents relied upon. Failure to comply with this rule can result in the exclusion of those documents from evidence unless the court grants permission.
- e. It is reiterated herein that the complainants nowhere in their Complaint, nor during the course of the arguments, have ever mentioned anything about the arbitration proceedings between the Complainants and the Financial Institution. Therefore, as per Order VII Rule 14, the said facts/documents cannot be taken on record in the present matter.
- f. That the Hon'ble High Court of Delhi in the matter of "Polyflor Ltd. vs A.N. Goenka & Ors." has stated as follows: "To grant leave to, and permit

the plaintiff to file and lead in evidence additional documents at this stage would mean that the defendants would be put to serious prejudice. The defendants have not had the occasion to deal with the said documents. Had the documents now sought to be produced, been produced at the relevant time, i.e., at the stage of filing of the suit, or at least at the time when the issues were framed, the defendants would have had the occasion to deal with the same by making appropriate pleadings and filing its own documents to counter the reliance placed by the plaintiff on the documents in question."

- g. That the above observation of the Hon'ble High Court of Delhi makes it evident that permitting the complainants to produce additional documents, which were not part of the complaint and were not brought on record earlier but has been file at a belated stage when the matter is posted for pronouncement of judgments, would cast a prejudice on the respondents.
- h. It is most humbly submitted that the complainants have not produced any Application before the Authority seeking permission to bring on record the Arbitral Award or any other documents annexed with the written submissions/arguments filed on their behalf. It is pertinent to mention herein that the Hon'ble Haryana Real Estate Appellate Tribunal, in the matter of "*M/s Cosmos Infra Engineering India Pvt. Ltd. vs Mrs. Teena Sood & Anr.*" [Appeal No. 349 of 2019] has held that the strict provisions of the CPC are not applicable to the proceedings under the Act, 2016 however, the principles provided therein are the important guiding factors. Therefore, in the absence of any application and in view of Order VII Rule 14 of CPC, the new facts and documents introduced by the complainants which were not part of the complaint cannot be accepted or taken on record at this belated stage when the matter is pending for the pronouncement of final order.

➤ **AT THE STAGE OF PRONOUNCEMENT OF THE FINAL ORDER, NO AMENDMENTS IN RELIEF CAN BE SOUGHT BY THE COMPLAINANTS**

- It is apposite to mention herein that the Complainants have filed the present Complaint seeking the below-mentioned reliefs:
 - Possession of the units;
 - Interest for delayed possession charges till actual handover of the Unit in question;
 - It is noted herein that the complainants *vide* their written submissions/arguments, are amending their reliefs/ seeking reliefs which were not part of the complaint. The complainants at the stage of

pronouncement of final order cannot amend their reliefs due to reasons as follows:

i. Reliefs have already been sought by the Complainants in the Complaint, and as per the settled principle of law, the reliefs have to be mentioned in the Complaint itself

- It is humbly submitted that every plaint/suit/complaint preferred before any courts/tribunals/Judicial and Quasi-Judicial Forums must contain relief(s) that a Complainant/Plaintiff/Petitioner is seeking adjudication from the said courts/tribunals/Judicial and Quasi-Judicial Forums. That, without claiming or seeking any kind of relief, no complaints/suits/plaints are filed by the Complainant/Plaintiff/Petitioner.
- That as per Order II Rule II of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC, 1908"), it is mandatory that every suit to include the whole claim which the complainant is entitled to make for any cause of action otherwise the claims that are not specifically prayed are deemed to relinquished and cannot be claimed at a later stage.

ii. After Final Arguments, no amendments can be allowed by the Court

- It is most humbly submitted that it is a well-settled principle of law that after the commencement of trial, no amendment in pleadings can be allowed. That the said principle is categorically enumerated in Order VI Rule 17 of the CPC and the same is reproduced herein below:-

"17. Amendment of pleadings. - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

- Therefore, in view of the above-mentioned facts and circumstances, when the complainants have already mentioned their reliefs in the complainant and no application for amendment was ever filed by the complainants therefore, the complainants at this stage when the matter is pending for pronouncement of the final order, cannot seek other reliefs which were not part of the complaint.
- **AMENDMENT OF PLEADINGS CANNOT BE PERMITTED AT THE STAGE OF THE PRONOUNCEMENT OF JUDGMENT**
- It is most humbly submitted that in the aforementioned paragraphs, the respondent no.1 has explained in detail as to how the complainants are introducing new facts/documents, seeking additional reliefs at the stage of pronouncement of the final order. It is noted herein that, vide their written

submissions/arguments, the complainants have not only tried to amend their pleadings but have also sought amendments in reliefs.

- That the Hon'ble Supreme Court in the matter of **"Revajeetu Builders & Developers vs Narayanswamy & Sons & Ors."** [(2009) 10 SCC 84], provided certain principles which have to be considered while allowing or rejecting the application for amendment. Relevant extract of the case is reproduced herein below:-

"FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing and or rejecting the application for amendment.

1. Whether the amendment sought is imperative for proper and effective adjudication of the case?
2. Whether the application for amendment is bona fide or mala fide?
3. The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
4. Refusing amendment would in fact lead to injustice or lead to multiple litigation;
5. Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and
6. As a general rule, the court should decline amendments if afresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive."

- That from a mere perusal of the supra case, it is evident that the facts/documents introduced by the complainants vide their written arguments/submissions are against the principles laid by the Hon'ble Supreme Court in the Supra Case. Therefore, in view of the supra case, it is most humbly submitted that the written submissions/arguments filed by the complainants are beyond the pleadings of the case and at this stage, when the matter is pending for pronouncement of judgments, the complainants cannot be permitted to introduce new facts/documents.

➤ **OBJECTIONS WITH RESPECT TO ANNEXURE WS-2 ANNEXED BY THE COMPLAINANTS ALLEGING THAT THE NAMES OF THE COMPLAINANTS WERE SHOWING IN THE LIST OF CUSTOMERS SUBMITTED BEFORE THE DTCP**

- That the complainants in para 16 (h) of their written submissions /arguments are alleging that the respondent no.1 has submitted a list of 821 customers before the DTCP on 23.03.2021, wherein the names of the complainants are mentioned. Thus, the Complainants are claiming that they were active allottees as of that date.
- Due to the continuous defaults of the complainants, the Financial Institution exercising its right under clauses 5, 6, 10 and 11 of the Tri-Partite Agreement dated 10.03.2015, has cancelled the allotment of the complainants on

03.01.2020. However, as there were on going cases/proceedings pending before Authorities/ Tribunals/ Courts with respect to the units pertaining to the complainants. Therefore, the names of the complainants continued to reflect in the list of customers until the respondent no. 1 paid off all the amounts/dues to the Financial Institution in terms of the settlement deed in the DRT proceedings. The mere fact that the names were reflected in the alleged list of allottees did not mean the complainants were active allottees. That the names of the complainants were retained in the said alleged list solely due to the reason of pending cases/proceedings. Therefore, the submission of the complainants that they were active allottees as on the date of filing of the list of customers before the DTCP is devoid of any merit. It is submitted that mere inclusion of the names of the complainants in the alleged list itself does not confer any right, title or interest in the unit in favour of the complainants.

➤ **OBJECTIONS WITH RESPECT TO THE COMPLAINANTS' ALLEGATIONS THAT THE CANCELLATION LETTER DATED 03.01.2020 IS NOT VALID**

- It is most humbly submitted that the Complainants in para 22 of their written submissions/ arguments are alleging that no notice under Section 13 (2) and 13 (4) of the SARFAESI Act, 2002 was issued by the Assets Reconstruction Company (ARC) after the assignment of the loan.
- It is pertinent to mention herein that the Complainants are trying to mislead the Ld. Authority by stating that no notice under SARFAESI was issued by the ARC. It is noteworthy to mention herein that under the MOU dated 30.06.2018, the Complainants themselves have acknowledged the following facts:-
 - a. **Unnumbered Recital 7** – The Complainants acknowledges dispute arose between the Financial Institution and Complainants.
 - b. **Unnumbered Recital 8** – Complainants acknowledges that they had defaulted in paying instalments.
 - c. **Unnumbered Recital 9** – acknowledgement that Financial Institution has initiated legal proceedings against the Complainants including SARFAESI proceedings. The possession of the properties mentioned in Schedule III has already taken by the Financial Institution.
 - d. **Clause 1**- Complainants acknowledged the legal activities initiated against Loan including SARFESAI activities.
 - e. **Clause 2** – The Complainants acknowledges the SARFEASI Notice.
 - f. **Clause 3** – Complainants agreed to resolve and settle all the dispute and deposit Rs. 9 Crores as per Schedule IV of the MOU. *(It is noted herein*

that the Complainant has not annexed the Schedule IV with the Complaint).

Clause 6 – If Complainants fails to deposit the settlement amount, the MOU shall be revoked and Financial Institution shall have the right to sell security interest in its possession and entire amount paid till date shall be forfeited.

- It is evident from the clauses of the MOU that the Complainants were well aware of the notices issued under the SARFAESI Act, 2002. That despite agreeing to make payments under the MOU, the Complainants defaulted in making payments therefore, the Financial Institution as per the provisions of Section 5 of the SARFAESI Act, 2002, transferred the loan account of the Complainants to Phoenix ARC Ltd, and an Assignment Agreement dated 03.12.2018 was executed.
- It is pertinent to mention herein that since the Notices were already issued under the SARFAESI Act, 2002 and the Phoenix ARC Ltd. has stepped into the shoes of the Financial Institution, therefore, there was no requirement of the fresh notices to be issued by the Phoenix ARC Ltd. under Section 13 (2) and 13 (4) of the SARFAESI Act, 2002. Therefore, the allegations of the Complainants in this regard are devoid of merit.

➤ **OBJECTIONS TO THE ALLEGATIONS OF THE ILLEGAL ALIENATION OF UNITS AND UTSAV REALTORS PVT. LTD. BEING SISTER CONCERN OF THE RESPONDENTS AND VIOLATION OF ORDER DATED 09.08.2023**

- That the Complainants in para 17 of their Written Submissions/ Arguments are alleging that the Respondents have violated the status quo order passed on 09.08.2023 and illegally alienated the units. Furthermore, the Complainants are also alleging that M/s Utsav Realtors Pvt. Ltd. is a sister concern of the Respondents.
- It is most humbly submitted that 3rd party rights in favour of M/s Utsav Realtors Pvt. Ltd. were already created before the Order dated 09.08.2023. That as of 09.08.2023, M/s Utsav Realtors Pvt. Ltd. was the allottee of the respective Units sold to it. Without prejudice to the rights of the Respondent No.1, it is most humbly submitted that it is well-established principle of law that every company has its separate legal existence, irrespective of whether one person or one company own all its shares. Therefore, whether M/s Utsav Realtors Pvt. Ltd. is a sister concern of Respondent No.1 or not is not at all relevant in the present case. Therefore, the plea of the Complainants with respect to the same is devoid of merit.

- It is further pertinent to mention herein that the Complainants in para 18 are alleging that the Respondent No.1 has violated the Order dated 09.08.2023 by executing the Conveyance Deed of the Units on 10.08.2023 and 19.10.2023. It is most humbly submitted that the Complainants are trying to mislead the Ld. Authority by alleging that the Respondent have violated the Order dated 09.08.2023.
- It is most humbly submitted that the Ld. Authority has passed the Order dated 09.08.2023, wherein the Respondents were directed to maintain status quo on the unit. However, it is pertinent to mention herein that the Order dated 09.08.2023 was uploaded on 16.08.2023, therefore, prior to 16.08.2023, there was no clarity about the Order dated 09.08.2023. Furthermore, since, the new allottees of the Units have already completed the formalities of execution of the Conveyance Deed and were pressurizing the respondent No.1 to execute the Conveyance Deed, therefore, the Respondent No.1 had no option but to execute the Conveyance Deed on 10.08.2023 as the stamp papers for the Conveyance deed were already purchased in the month of June 2023. It is further noted herein that as far as the Conveyance Deed executed on 19.10.2023 is concerned, it is most humbly submitted that the Ld. Authority vide Order 28.01.2025 has already clarified that there was no status quo Order for the period 12.09.2023, 14.11.2023, 07.05.2024, 20.08.2024 and 22.10.2024. Therefore, it is evident from the Order of Ld. Authority itself that the Respondent No.1 has not violated any Order of the Ld. Authority. Therefore, the contention raised by the Complainants with respect to the same is devoid of merit.

➤ **OBJECTIONS TO THE CONTENTION OF THE COMPLAINANTS THAT LEGAL OFFER OF POSSESSION HAS NOT BEEN OFFERED TILL DATE BY THE RESPONDENTS**

- It is most humbly submitted that the offer of possession dated 09.12.2019 were duly sent to the complainants vide speed post. The details of the 10 speed post vide with the offer of possession dated 09.12.2019 (for each of the Unit) was duly dispatched to the Complainants, and the relevant postal records are enclosed herewith for reference:-

Customer CODE	BAR CODE of Postal Receipt	Address 1	City	State
149114	ed579833157in	781, SECTOR-17A	GURGAON	HARYANA
149115	ed579833165in	H.NO.-781, SECTOR-17A,	GURGAON	HARYANA
149118	ed579833174in	H.NO.-781, SECTOR-17A,	GURGAON	HARYANA
149119	ed579833188in	H.NO.-781, SECTOR-17A,	GURGAON	HARYANA

149121	ed579833191in	H.NO.- 781, SECTOR-17A	GURGAON	HARYANA
149122	ed579833205in	H.NO.-781, SECTOR-17A	GURGAON	HARYANA
149123	ed579833214in	H.NO.-781, SECTOR-17A	GURGAON	HARYANA
149124	ed579833228in	H.NO.-781, SECTOR-17A	GURGAON	HARYANA
149226	ed407498201in	781, SECTOR-17A	GURGAON	HARYANA
149227	ed407498215in	781, SECTOR-17A	GURGAON	HARYANA

- It is pertinent to mention that the complainants have not denied the receipt of reminder letter dated 14.09.2020 which was only a reminder letter towards the outstanding dues payable under offer of possession dated 09.12.2019. Therefore, it is safely established that the complainants were in receipt of the offer of possession letters sent by post to them by the Respondent no.1 and despite issuance of offer of possession, no payment was made by the complainants consequently leading to the cancellation of units by the lender/respondents.
- In view of the facts and circumstances explained hereinabove, it is most humbly submitted that the Written Submissions/ Arguments filed by the Complainants are not maintainable as the same are filed with a malafide intention of misleading the Ld. Authority and extract unjust enrichment from the Respondent No.1.
- Without prejudice to the rights of the Respondent No.1 and without admitting any averments made by the Complainants, it is noted therein that since the Complainants have made vague, false, misleading submissions vide their Written Submissions/Arguments, therefore, the Respondent No.1 most humbly requests the Ld. Authority to list the matter for further arguments.

It is most humbly submitted that no prejudice shall be caused to the Complainants if the matter is put for arguments.

15. The Authority observes that the present complaint was heard on 11.03.2025 and adjourned to 20.05.2025 for pronouncement of order and both the parties were granted an opportunity to file brief written submissions. The complainants have filed the written submissions on 30.04.2025 along with an additional prayer along with the prayers already filed. In view of the above, the Authority is of the view that at this belated stage the additional relief sought claimed by the complainant cannot be allowed.

F. Jurisdiction of the Authority

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

E.I Territorial jurisdiction

17. 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.

E.II Subject matter jurisdiction

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

Section 11

(4) The promoter shall-

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

19. So, in view of the provisions of the Act quoted above, the authority has complete territorial and subject matter 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 the relief sought by the complainants.

- F.I Direct the respondent to offer the possession of the unit in question and be handed over immediately.**
- F.II Direct the respondent to pay interest for delay possession charges till the actual handover of the unit in question.**

20. In brief, the complainants booked 10 units in the project of the respondent/promoter namely **"Monet Avant floor"** in **"Astaire Garden"** at Sector 70&70A, Gurugram, Haryana. The respondent issued 10 allotment letters separately for each unit in favour of the complainants on 03.03.2015. Thereafter, the respondent executed the floor buyer's agreement individually for each unit on 05.03.2015 and 24.03.2015 respectively. Also, the parties herein and the financial institution namely, Bajaj Finance Limited has executed a tripartite agreement for all the said 10 units separately on 10.03.2015 vide which the complainants were advanced loan for purchase of the above apartments.
21. The details of the all the 10 allotted units, sale consideration, total amount paid by the complainants and financial institution, cancellation letter and the creation of third-party rights have been detailed in the following tabular form:

S. No	Case no.	Details of unit no.	Total sale consideration in Rs.	Total amount paid by the complainants in Rs.	Amount paid by the complainants itself	Amount paid by the financial institution	Letter by financial institution w.r.t cancellation	Date of allotment letter in favour of 3rd person	Third party rights created in favour of
1	2292/2023	C-100-FF	1,29,65,325	1,07,75,005	19,36,559	89,47,196	03.01.2020	18.04.2023	Ms. Deepa Tripathi
2	2287/2023	C-102-SF	1,29,65,325	1,07,74,999	19,36,559	89,47,190	03.01.2020	04.07.2023	Ms. Ashita Chander
3	2289/2023	C-101-SF	1,29,65,325	1,07,74,999	19,36,559	89,47,190	03.01.2020	03.07.2023	M/s Utsav Realtors Private Limited
4	2288/2023	C-102-FF	1,29,65,325	1,11,58,429	19,36,559	89,47,190	03.01.2020	20.06.2023	Ms. Priyanka Chawla
5	2290/2023	C-101-FF	1,29,65,325	1,07,74,999	19,36,559	89,47,190	03.01.2020	31.03.2023	Mr. Thammineni Anil Kumar
6	2291/2023	C-100-SF	1,29,65,325	1,07,74,999	19,36,559	89,47,190	03.01.2020	03.07.2023	M/s Utsav Realtors

									Private Limited
7	2285/2023	C-103-SF	1,29,65,325	1,07,74,999	19,36,559	89,47,190	03.01.2020	03.07.2023	M/s Utsav Realtors Private Limited
8	2286/2023	C-103-FF	1,29,65,325	1,11,58,429	19,36,559	89,47,190	03.01.2020	31.03.2023	Mr. Piyush Chandra
9	2284/2023	C-58-GF	1,27,03,393	1,11,58,429	19,40,393	93,30,620	03.01.2020	03.07.2023	M/s Utsav Realtors Private Limited
10	2283/2023	C-58-FF	1,06,23,983	94,51,402	19,23,323	76,23,593	03.01.2020	03.06.2023	Mr. Samarth Gupta

22. Subsequently, the complainants loan account was declared NPA by the financial institution on 01.02.2018 and proceedings under the SARFAESI Act, 2002 were invoked. Further, the loan account of the complainants was assigned by M/s Bajaj Finance Limited to an asset reconstruction company known as **Phoenix ARC Pvt. Ltd.** vide an assignment agreement dated 03.12.2018,
23. Meanwhile, the respondent/promoter obtained the occupation certificate in respect of the subject units on 14.02.2018 and 19.09.2017 in two phases and thereafter, offered the possession of all 10 units on 09.12.2019. Upon failure of the complainant to clear the loan amount, the financial institution namely **Phoenix ARC Pvt. Ltd.** sent a letter dated 03.01.2020 to the respondent to proceed with the cancellation of the allotted unit and refund of the loan amount in terms of the tri-partite agreement dated 10.03.2015 and 28.03.2015.
24. The Authority observes that the complainant has filed the present complaint seeking relief of possession of all the 10 allotted units along with delay possession charges as per section 18 of the Act. However, the issue before the Authority is whether the complainants are entitled to seek the said relief in consonance with the buyer's agreement executed inter se parties read with Tri-partite Agreement executed inter se parties.

25. The Authority observes that the 'possession linked payment plan' was agreed between the parties herein. The payments were to be made as follows:- **At the time of booking-** Rs.1 Lac (BSP), **Within 15 days of booking-** Complete 90% (BSP+DC+RFRC+PBIC), **On offer of possession-** Complete 10% (BSP+DC+RFRC+PBIC) + 100% PLC + 100% IFMS and the complainants were contractually obligated to make payment of the instalments as per the agreed payment plan. It is pertinent to mention here that the complainants availed a loan facility to make the payment in respect of the allotted unit and accordingly, a Tri-partite Agreement (hereinafter referred as 'TPA') was executed on 10.03.2015 and 28.03.2015 between the complainants, the respondent and financial institution i.e., Bajaj Finance Limited. The complainants have failed to pay the loan amount (Pre-EMI/EMI's) to the financial institution as well as the outstanding dues of the respondent/promoter resulting in the invocation of proceedings under the SARFAESI Act by the lender.
26. Further, under section 5(1)(b), Bajaj Finance Limited transferred the 3 loan accounts of the complainants and its security interest to an asset reconstruction company known as **Phoenix ARC Pvt. Ltd.** vide an assignment agreement dated 03.12.2018.
27. Upon failure on the part of the complainants to clear the loan amount, a letter dated 03.01.2020 was sent by the financial institution (**Phoenix ARC Pvt. Ltd.**) to the respondent to proceed with the cancellation of the allotment and refund of the loan amount as per tri-partite agreement dated 10.03.2015 and 28.03.2015. The letter dated 03.01.2020 is reproduced below for ready reference:-

Registered A.D/Courier/E-mail

Phoenix/RESL/3157/19-20

3rd January 2020

1. *BPTP Ltd.*
28, ECH, House, 1st floor, Kasturba Gandhi Marg,
New Delhi- 110001
2. *Countrywide Promoters Pvt. Ltd.*

28, ECH, House, 1st floor, Kasturba Gandhi Marg,
New Delhi- 110001

Sub: Refund of loan amount as per tripartite agreement dated 10.03.2015/28.03.2015

Dear Sir,

This has reference to the tripartite agreements (hereinafter collectively referred as the ("Tripartite Agreements") executed amongst Bajaj Finance Limited (BFL), the addressee and the Allottees, i.e. Neeraj Chaudhary and Monia Chaudhary, for allotment of 10 (Ten) floors (Floors) in a housing project with multiple residential units by the name of Monet Avant Floors, Sector-7QA, Gurgaon ("Project"),

- a) That BFL has accordingly disbursed a sum of Rs.8,85,21,923/- (Eight Crores Eighty Five Lakhs Twenty One Thousand Nine Hundred and Twenty Three Only) in your account maintained with the Punjab National Bank as more particularly elaborated in Schedule I hereunder.
- b) That subsequently BFL has vide an Assignment Agreement dated 03.12.2018 ("Assignment Agreement") assigned the debts due and payable on account of loan given for the Floors in favour of Phoenix ARC Private Limited (acting as a trustee of Phoenix Trust FY19-5 Scheme I) ("the Lender") along with all the rights, title, security interests, benefits, financial documents, in the facilities granted by BFL with other incidental rights thereto including the assignment of the said facilities along with the underlying securities.
- c) The rights and interest of said BFL has been assigned to the Lender and the Lender has become the absolute owner of the said loan accounts and all right title and interest in respect of the Floors is now vested with Lender and thereby the Lender has substituted BFL in all agreements including the said Tri-partite Agreements. You can refer to our letter dated May 30, 2019 in this regard.
- d) That it is a matter of your record and knowledge that the Allottees have failed to make the balance payment to you and the Allottees have also failed in repayment of the credit facilities to the Lender.
- e) That therefore the Lender has become entitled to receive back the entire money forthwith as per the terms of the tripartite agreement.
- f) That in fact, clauses of Tripartite Agreements puts an obligation on you that if Allottees fail to pay the balance amount representing the difference between the loan sanctioned by the Lender and the actual purchase price of the Floors, the entire amount advanced by the Lender will be refunded by you to the Lender forthwith. However, in the present case, though the Allottees have failed to pay the balance amount, you have not yet refunded the advanced amount to the Lender till date.
- g) That the clauses of Tripartite Agreements also gives an option to the Lender that if Allottees default in repayment of loan then the Lender has an option to instruct you to cancel the allotment and refund the entire advanced/funded amount directly to the Lender.
- h) That in compliance with unconditional undertaking given by you in Tripartite Agreements we hereby exercise our right under the Tripartite Agreements and instruct you to refund the entire advanced amount, i.e., Rs.8,85,21,923/- (Eight Crores Eighty Five Lakh Twenty One Thousand Nine Hundred and Twenty Three Only) along with interest @ 18% since the date of the default in payment of purchase price to you by the Allottees.
- i) The payment of amount under demand shall be paid by you in the following bank account within 7 working days.

Account details of trust need to be recorded here:
Beneficiary Name: Phoenix Trust FY19-5 Scheme I
Bank Name: Kotak Mahindra Bank Limited
Account No.: 8612768219
Branch: Kalina, Mumbai
IFSC Code: Kkbk0000631

- j) The Lender is entitled to receive from you, and you are bound, liable and obliged to remit/pay to the Lender a sum of Rs.8,85,21,923/- (Eight Crores Eighty Five Lakh Twenty One Thousand Nine Hundred and Twenty Three Only) together with all further interests that has accrued and will accrue thereon @ 18% p.a. since the date of the default in payment of purchase price to you by the Allottees.

In view of and under the circumstances stated herein above, we do hereby call upon you to forthwith make payment of the aforesaid sum of Rs.8,85,21,923/- (Eight Crores Eighty Five Lakh Twenty One Thousand Nine Hundred and Twenty Three Only) due and payable together with all further interests at the rate of 18% p.a. since the date of the default in payment of purchase price to you by the Allottees till the date of payment. Should you fail to comply with the aforesaid requisitions within 7 (seven) days from the date of this notice, we shall be compelled and constrained to initiate appropriate Civil and/or Criminal proceedings against you before the appropriate Court of Law for recovery of the aforementioned amount without any further reference to you, which you may please note. Please further note that in the event such proceedings are initiated, you will be held liable for all the costs and consequences resulting there from.

This notice is issued without prejudice to the other rights, claims and contentions in this matter.

Please further note that for the purpose of making payment of the amount as demanded hereinabove you may contact the undersigned.

Yours truly

For Phoenix ARC Private Limited
Trustee of phoenix Trust FY19-5 Scheme I

28. The Authority observes that as per clause 6 of the TPA, in the event of default of repayment of loan by the Complainants-allottee, the builder shall on written instruction from financial institution cancel the allotment of the subject unit and refund the entire amount directly to the financial institution. The relevant clause of the TPA is reproduced below for ready reference:

"6. Further, the Builder, in the event of default of repayment of loan by the Borrowers, shall on written intimation/instructions of Bajaj Finance Ltd., cancel the allotment of the property of the borrowers and refund the entire amount advanced/funded by Bajaj Finance Ltd., directly to Bajaj Finance Ltd. The builder shall have right to recover/forfeit the earnest money."

29. Since the complainants failed to pay EMIs in terms of their loan agreement(s) & tripartite agreement(s) to the lender (Bajaj Finance Limited and subsequently

Phoenix ARC Pvt. Ltd.), the complainants were declared as non-performing assets ("NPA") on 01.02.2018 by the lender. Thereafter, the lender initiated proceedings under the SARFAESI Act against the complainants by filing *case no. 51/SA/DM* titled "*Phoenix ARC Pvt. Ltd vs. Neeraj Chaudhary & Ors*". Vide order dated 17.12.2019, the Ld. District Magistrate, Gurugram directed the possession be handed over to the lender for units no. C-58 GF and C-58FF.

30. That to recover the amounts payable, the financial institution then filed a case under Section 19 of the Recovery of Debt and Bankruptcy Act, 1992 (hereinafter referred to as the "**RDB Act**") titled as *Pheonix ARC Pvt. Ltd. vs BPTP Limited & Ors.* bearing original application no. 112 of 2020 before the Hon'ble Debt Recovery Tribunal - 2, Delhi (hereinafter referred to as the "**DRT**"). The complainants herein were defendant's no. 3 and 4 in the said Original Application No. 112 of 2020. During the pendency of the proceedings before the Hon'ble DRT, the financial institution and respondent no. 1 entered into an **agreement dated 28.03.2023** to settle the dues with respect to all the units originally allotted to the complainants. As per the terms of the agreement dated 28.03.2023, the respondent no.1 refunded the entire financial loan amount of Rs.8,85,00,000/- to the financial institution as full & final settlement amount. The financial institution then issued **No Objection Certificates** to respondent no.1 for releasing the units and accordingly, respondent no.1 again obtained possession of the units under the SARFAESI Act. In terms of the said agreement between the financial institution and respondent no.1, the original application no. 112 of 2020 was disposed of by the Hon'ble DRT vide Order dated 29.12.2023.
31. The Authority observes that the complainants were party to the proceedings under the SARFAESI Act as well as DRT and cannot feign ignorance of the goings on under the same. Admittedly, the complainants were not in a position to pay the pending amounts towards the sale consideration of the subject units and

even to service the loans advanced by the lending institution resulting in the chain of events that led to the forfeiture of the properties. The respondent was obligated to comply with the covenants of the tripartite agreements dated 10.03.2015 and 28.03.2015. In view of the above, the respondent cannot be faulted for the action taken in this regard.

32. In fact, it has been brought to the notice of the Authority that the complainants have taken recourse to the remedies under the relevant laws in the DRT as well as the Civil Courts.
33. Keeping in view the submissions made by both the parties and documents placed on record, it is observed that the complainants were contractually obligated to make payment as per payment plan agreed between the parties in terms of clause 8 of the BBA and section 19(6) of the Act, the complainants are legally obligated to make necessary payments within the time as specified in the said agreement. The relevant clause of the BBA and section 19 (6) of the Act are reproduced as under:

"19. Rights and duties of allottees.—

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

Clause 8 of the buyer's agreement

8. TIMELY PAYMENT ESSENCE OF CONTRACT: TERMINATION, CANCELLATION AND FORFEITURE:-

8.1 The timely payment of each instalment of the Total Sale Consideration i.e., COP and other charges as stated herein is the essence of this transaction/Agreement. In case the Purchaser(s) neglects, omits, ignores, defaults, delays or fails, for any reason whatsoever, to pay in time any of the instalments or other amounts and charges due and payable by the Purchaser(s) as per the payment schedule opted or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions on his/her part under this Agreement or commits any breach of the undertakings and covenants contained herein, the Seller/Confirming Party may at its sole discretion be entitled to terminate this Agreement forthwith and forfeit the amount of Earnest money and Non-Refundable



Amounts and other amounts of such nature. In the event the Seller/Confirming Party exercises its right to terminate the present Agreement, the Purchaser(s):

- a. **Shall be left with no right or interest on the said Floor and the Seller/Confirming Party shall have the absolute right to sell the said Floor to any third party.**
- b. Sole right shall be to approach the Seller / Confirming Party for the refund, if any, and the Seller/Confirming Party shall refund the balance amount, if any, to the Purchaser(s) without any interest within (120) One Hundred Twenty Days from the date of sale of the Floor by the Seller/Confirming Party to any third party.

8.2 However, in the event the Purchaser(s) defaults in making payment of any of the instalment of any other amount due as per the payment plan opted, the Seller/Confirming Party may at its sole and absolute discretion, choose to grant time to Purchaser(s) to rectify such defaults through a notice in writing and the Purchaser(s) shall be liable to pay the outstanding dues together with interest @ 18% p.a. compounded quarterly or at such higher rate as may be mentioned in the said notice for the period of delay in making the payments as stipulated in the said notice. It has been clarified that any payment made by the Purchaser(s) shall be first adjusted towards interest and then the remaining amount, if any, shall be adjusted towards the outstanding instalment or any other amount due as per the payment plan opted.

8.3 The Purchaser(s) has fully understood and agrees that in case the Purchaser(s) cancels, withdraws or surrenders his allotment, for any reason whatsoever at any point of time, then the Seller/Confirming Party at its sole discretion may cancel/terminate the this Agreement and shall forfeit Earnest Money and Non- Refundable Amounts, paid by the Purchaser(s). The Purchaser(s) shall approach the Seller/Confirming Party for the refund, if any, and the Seller/Confirming Party shall refund the balance amount i.e. the refundable amount left, after deducting the Earnest Money and Non-Refundable Amounts and any other amounts due and payable by the Purchaser(s), without any interest and compensation to the Purchaser(s) within (120) One Hundred Twenty Days from the date of sale of the Floor by the Seller/Confirming Party to any third party.

8.4. Notwithstanding anything contained herein above the Seller/Confirming Party shall have absolute right to terminate/cancel the allotment of the Purchaser(s) and/or this Agreement on occurrence of any of the following indicative events of defaults or otherwise, the consequences of which shall be the same as provided hereinabove:

The Purchaser(s) agree that all defaults, breaches and/or non-compliance of any of the terms and conditions of this Agreement shall be deemed to be events of defaults. Some of the indicative events of defaults are mentioned below which are merely illustrative and are not exhaustive.


- a. Failure to make payments within the time stipulated, failure to pay stamp duty, legal, registration, any other/incidental/ancillary charges/amounts, taxes etc. as may be notified, and all other defaults of similar nature;

- b. Failure to execute any other deed/document/undertakings/indemnities etc. or to perform any other obligation, if any, set forth in present agreement or any other agreement with the Seller/Confirming Party in relation to the Colony;*
 - c. Failure to take possession of the Floor within the time stipulated by the Seller/Confirming Party in its notice for offer of possession;*
 - d. Failure to execute the Conveyance Deed within the time stipulated by the Seller/Confirming Party in its notice*
 - e. Failure to execute the Maintenance Agreement and/or to pay on or before its due date the maintenance security deposits, or any increase thereof, as may be demanded;*
 - f. Assignment of this Agreement or any interest of the Purchaser(s) in this Agreement without prior written Consent of the Seller/Confirming Party;*
 - g. Dishonour of any cheque(s) given by the Purchaser(s) for any reason whatsoever;*
 - h. Allotment of Floor has been obtained through misrepresentation and suppression of material facts;*
 - i. Violation of any directions, notices, rules and regulations framed by the Seller/Confirming Party or by any Authorities;*
 - j. Any default of the terms and conditions of this Agreement Maintenance Agreement or any agreement or undertaking or affidavit issued pursuant thereto;*
- 8.5. Considering that the Seller/Confirming Party's ability to fulfill its obligation is dependent on the Purchasers) adherence to timely compliance and fulfillment of its obligations in entirety, in every case of delayed payment and irrespective of the type of Payment Plan, acceptance of such delayed installment(s) /payments along with interest beyond a period from the due date, shall always be without prejudice to the rights of the Seller/Confirming Party at its sole discretion to terminate this Agreement and exercise the consequent rights under this Agreement."*

34. However, it is matter of fact that the complainants have failed to make payments as per the agreed in the tripartite agreement dated 10.03.2015 and 28.03.2015 executed between the complainants and financial institution (Bajaj Finance Limited) thus, the same violating contractual obligation which led to the initiation of proceedings under SARFAESI Act and RDB Act. It is observed that the respondent was obligated to act upon the letter dated 03.01.2020 issued by the financial institution upon default of the complainants to make timely payment. In view of the factual as well as legal provisions, the relief sought by the complainants is hereby declined as the complainants/allottee have violated the term and conditions of the buyer's agreement as well as the tripartite

agreement dated 10.03.2015 and 28.03.2015 by defaulting in making payment as per the agreed payment plan.

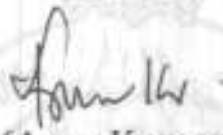
35. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of the subject unit is mentioned in each of the complaints.
36. Complaint as well as applications, if any, stands disposed off accordingly.
37. Files be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.05.2025

HARERA
GURUGRAM