

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

Order Reserved on : 18.03.2025
Order pronounced on : 06.05.2025

Shri Munesh Tyagi
R/o: RA-5, Inderpuri, New Delhi- 110012.

Complainant**Versus**

1. M/s Countrywide Promoters Private Limited
 2. M/s Anjali Promoters and Developers Private Limited
- Both having Regd. office at:** - OT-14, 3rd floor, Next Door
Parklands, Sector- 76, Faridabad, Haryana- 121004
Also at: - M-11, Middle Circle, Connaught Circus, New
Delhi- 110001.

Respondents**CORAM:**

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Dhruv Lamba (Advocate)
None
Shri Harshit Batra (Advocate)

Complainant
Respondent No. 1
Respondent No. 2

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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:

S. N.	Particulars	Details
1.	Name of the project	Centra One
2.	Project location	Sector 61, Gurugram
3.	Nature of Project	Commercial Complex
4.	Date of booking application form	17.07.2008 [page no. 65 of the reply]
5.	Date of allotment	31.03.2011 [page no. 26 of the complaint]
6.	Unit No.	08-805, 8 th floor [Page no. 37 of the complaint]
7.	Revised unit no. at the time of offer of possession	09-905, 9 th floor, [Page no. 184 of reply]
8.	Unit Area	1000 sq. ft. [Page no. 37 of the complaint]
9.	Revised unit area	1030 sq. ft. (Page no. 162 of reply)
10.	Date of agreement for sale	01.07.2011 (Page 32 of complaint)
11.	Possession clause	Clause 2 Possession <i>2.1 The possession of the said premises shall be endeavored to be delivered to the intending purchaser by 31st December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said</i>

		<p>premises shall remain at the risk and cost of the intending purchaser.</p> <p>2.2 The intending purchaser shall only be entitled to the possession of the said premises after making full payment of the consideration and other charges due and payable. Under no circumstances shall the possession of the said premises be given to the intending purchaser unless all the payments in full, along with interest due, if any, have been made by the intending purchaser to the intending seller. However, subject to full payment of consideration along with interest by the intending purchaser, if the intending seller fails to deliver the possession of the said premises to the intending purchaser by 30th June 2012, however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending Purchaser, then the intending seller shall be liable to pay penalty to the intending purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said premise by giving appropriate notice to the intending purchaser in this regard. If the intending seller has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by June 2012 is attributable to any delay on part of DTCP/competent authority, then the Intending Seller shall not be required to pay any penalty under this clause.</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>[Page no. 41-42 of complaint]</p>
12.	Due date of possession	<p>30.06.2012</p> <p>[As per BBA with a grace period of 6 months is granted being unconditionally]</p>
13.	Basic sale consideration	<p>Rs.65,00,000/-</p> <p>[Page no. 38 of complaint]</p>
	Total sale consideration	<p>Rs.89,98,154/-</p> <p>[As per Statement of account cum invoice at page no. 186 of reply]</p>

		[As per Statement of account cum invoice at page no. 186 of reply]
14.	Amount paid by the complainant	Rs.88,50,833 /- [Page no. 25 of the complaint]
15.	Discount letter dated 12.02.2019	Rs.5,45,000/- [Page no. 30 of reply]
16.	Occupation certificate	09.10.2018 [Page no. 182-183 of the reply]
17.	Offer of possession	19.11.2018 [Page no. 184 of the reply]
18.	Reminder/demand letters issued to complainant	03.12.2021, 14.01.2022 [Page no. 178 to 181 of reply]

B. Facts of the complaint

3. The complainant has made the following submission: -

- I. That Mr. Munesh Tyagi (hereinafter referred to as 'Complainant') is a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondents and are stated to be a builder/ promoter.
- II. That the office of the Director, Town & Country Planning, Chandigarh, Government of Haryana (DTCP) granted license bearing no. 277 of 2007 dated 17.12.2007 to the respondents for the development of a commercial complex on land admeasuring 3.675 acres situated in the revenue estates of Village Ghatta at Sector 61, District Gurugram, Haryana. Thereafter, the respondents issued an advertisement w.r.t launching of a commercial project namely "Centra One" situated at Sector 61, Gurgaon and thereby invited applications from prospective buyers for the purchase of units in the said project.
- III. That after representing through brochures, about the facilities to be provided, the respondent promoters managed to impress to the complainant herein, who then decided to invest his hard-earned money in purchasing a

unit in the subject project. Accordingly, relying on the assurances and promises of the respondent/promoters, the complainant allottee made an application for registration for provisional allotment of the commercial space/ unit/ office and made a payment of Rs.4,00,000/- vide cheque against the total sale consideration of the subject unit. The said payment was also acknowledged by the respondent's company and a receipt in this regard bearing no. 1400020771 was issued to the complainant/allottee.

- IV. That in compliance of the demand raised by the respondents, the complainant had paid an amount of Rs.3,00,000/-, Rs.4,00,000/-, and Rs.4,50,000/- against the total sale consideration of the subject unit on 04.02.2010, 14.04.2010 and 20.04.2010 respectively. The same is reflected in the statement of accounts issued by the respondent's Company. It is necessary to mention here that all these payments totalling to the tune of Rs.15,50,000/- were paid even before the issuance of the allotment letter.
- V. That on 31.03.2011 i.e., after three 3 years of booking, an allotment cum demand letter was issued by the respondent no. 2 namely M/s. Anjali Promoters & Developers Private Limited in the name of the present allottee vide which a unit bearing no. 08-805, admeasuring about 1000 sq. ft. was allotted. The respondent no. 2 vide this letter dated 31.03.2011 had specifically called upon the present allottee to pay the following amounts within 15 days from the said letter i.e., on or before 15.04.2011, failing which interest @ 18% p.a. will be imposed for the period of delay:

BSP	Rs.38,20,919/-
DC	Rs.3,13,401/-
PLC	Rs.3,58,475/-
Car Parking	Rs.3,12,360/-
Total	Rs.48,05,155/-

- VI. That on 01.07.2011 i.e., after almost three and a half years of paying the booking amount and after collecting almost 42% of the total sale consideration of the subject unit, a buyer's agreement was executed between

the respondents and the present Complainant, wherein a unit bearing no. 805 on 8th Floor, having a super area of 1000 sq. ft. was allotted for a total sale consideration of Rs.65,00,000/-. As per clause 2.1 of the buyer's agreement, the respondent has promised to handover the physical possession of the subject unit by 31.12.2011. However, till date the respondent has not delivered the physical possession of the subject unit.

- VII. That the present complainants had paid the entire sale consideration to the tune of Rs.88,50,333/- against the total consideration of Rs.65,00,000/- as and when demanded by the respondent/builders. However, in spite of the present complainant having fulfilled its obligations being an allottee, the respondents have not fulfilled their contractual obligation and has considerably delayed the construction and hence possession of the subject unit. As per clause 2.1 of the buyer's agreement, the promoter had promised to handover the physical possession of the subject unit by 31.12.2011. However, it is a matter of fact that the physical possession of the unit has not been offered by the respondents till date.
- VIII. Despite several requests from the present complainants to the respondents and its employees and even after approaching them by personally visiting to the office of the respondents several times for the actual handing over of the possession of the subject unit, the respondents have failed mercilessly in fulfilling their contractual and lawful obligations. Further, many e-mails are written in this regard by the complainant to the respondents and their employees but all in vain.
- IX. That the complainant does not intend to withdraw and wishes to continue in the subject project. So, in the light of the facts mentioned above, the respondents are liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of

possession i.e., 31.12.2011 till actual handing over of physical possession of the unit as per the provisions of section 18 of the Act of 2016.

- X. That till date the respondent has not handed over the physical possession of the subject unit to the complainant and hence shall not charge maintenance charge till physical possession of the subject unit is not handed over to the complainant. However, the respondent is raising maintenance bills for every month which are illegal and needs to be strike down. Therefore, it is most humbly prayed before this Authority that the respondent shall be directed to not charge any maintenance charges till physical possession of the subject unit is not handed over to the complainant or in alternative the respondent shall be directed to charge maintenance charges only after physical possession of the subject unit has been handed over to the present complainant in the best interest of justice.
- XI. That to the utter shock and surprise of the complainant, the respondent has arbitrarily and in an illegal manner, without taking any consent of the complainant, has changed the originally allotted unit of the complainant, allotted vide buyer's agreement bearing no. 08-805 situated on the 8th floor to 09-905 on 9th floor. This is a clear-cut violation of the provisions of the Act of 2016 and rules and regulations made thereunder. The pious object behind the enactment of the Act of 2016 was to ensure that the sale of the plot, apartment or building, as the case may be, has been carried out in an efficient and transparent manner and to protect the interest of consumers in real estate sector. However, the promoters like the present respondent are cheating home buyers like the present complainant by taking all of their hard-earned monies. In the light of the facts mentioned above, the respondent is liable to be penalized as per the provisions of the Act of 2016 for not fulfilling its lawful and contractual obligations.

- XII. That furthermore the respondent builder has wrongly charged Holding charges from the present complainants. However, as per the law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020, the holding charges shall also not be charged by the respondent builder at any point of time even if they are part of the agreement.
- XIII. That due to the malafide intentions of the respondents and non-delivery of the subject apartment the complainant has accrued huge losses on account of the career plans of their family members and themselves and the future of the complainant and his family is rendered in dark as the planning with which they had invested their hard-earned monies has resulted in sub-zero results and borne thorns instead of bearing fruits. Without prejudice to the above, the complainants reserves the right to file a complaint before the Adjudicating Office for compensation.
- XIV. That the complainant being an aggrieved person is filing the present complaint under section 31 with this Authority for the violation /contravention of various provisions of the Act of 2016 and Rules of 2017. Furthermore, the complainant does not want to withdraw from the project and intends to continue with the project. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 01.07.2011 to hand over the possession of the subject unit within the stipulated period. Hence, the respondents have failed to fulfil its obligations as contained in section 11(4)(a) read with section 18(1) of the Act of 2016. It is a matter of fact that the respondents are liable to hand over the possession of the subject unit on or before the due date of possession i.e., 31.12.2011 as per clause 2.1 of the buyer's agreement. Therefore, the respondents are liable to pay the delay possession charges at the prescribed rate as prescribed under Rule 15 of the Rules of 2017 from the due date of possession i.e., 31.12.2011 till actual handing over of physical possession of

the subject unit as per the provisions of section 18 of the Act of 2016. The respondents are liable to execute a conveyance deed in favour of the present complainant as per provisions of section 17 of the Act of 2016.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to pay delay possession charges at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the promissory date of delivery of the subject unit i.e., 31.12.2011, till the date of actual handover of possession of the subject unit in view of section 18 of the Act of 2016;
 - ii. Direct the respondent to handover the possession of the subject unit after taking requisite approvals from the competent authorities;
 - iii. Direct the respondent to execute a conveyance deed in favour of the present complainant in view of section 17 of the Act of 2016;
 - iv. The respondent shall be directed to not charge any maintenance charges till physical possession of the subject unit is not handed over to the complainant or in alternative the respondent shall be directed to charge maintenance charges only after physical possession of the subject unit has been handed over to the present complainant in the best interest of justice;
 - v. Direct the respondent to not charge any holding charges.
5. 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.
6. The complainant has filed the complaint on 08.08.2024, against the two respondents namely (i.e., M/s Countrywide Promoters Developers Private Limited and M/s Anjali Promoters and Developers Private Limited), the respondent no. 2 filed the reply on 02.01.2025, which is taken on record. The respondent no.1 has failed to put in appearance before the Authority and has also

failed to file any written reply. In view of the same, on 18.03.2025, the matter was proceeded ex-parte against the respondent no. 1.

D. Reply by the respondent.

7. The respondent has contested the complaint on the following grounds: -

- i. That the respondent no. 1 is not a confirming party to the space buyer's agreement executed between the parties and no specific relief has been sought from respondent no. 1. Hence, respondent no. 1 is not a necessary party to the present complainant and the name of respondent no. 1 should be deleted from the array of parties. That the respondent no. 1 is not effective and vide order bearing no. CP (CAA) 26/Chd/Hry/2023 dated 20.09.2024 passed by Hon'ble NCLT, Chandigarh, the respondent no. 1 company has transferred its assets to the transferee company. That the respondent no. 1 is not a separate legal entity as on date and no legal action can be proceeded against the respondent no. 1, hence, the name of the respondent no. 1 should be deleted from the array of parties.
- ii. That the complainant has 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. The complainant being interested in the real estate development of respondent no. 2, known under the name and style of "Centra One" located at Sector 61, Gurugram, Haryana booked a unit in the said project after conducting his due diligence. That the project has all the necessary approvals and permissions. It was granted the license no. 277 of 2007 from Director, Town and Country Planning, Haryana (DTCP).
- iii. That pursuant thereof, a space tentatively bearing number 08-805 admeasuring 1000 sq. ft. (the "Old unit") was allotted to the complainant. It is submitted that prior to approaching respondent no. 2, the complainant had conducted extensive and independent inquiries regarding the project and it

was only after the complainant was fully satisfied with regard to all aspects of the project, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondents.

- iv. That consequently, a space buyer's agreement dated 01.07.2011 was executed between the complainant and respondent no. 2. That the agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- v. That the rights and obligations of the allottee as well as the builder are completely and entirely determined by the covenants incorporated in the agreement which continue to be binding upon the parties thereto with full force and effect. At this stage, it is imperative to mention here that both parties were obligated to fulfill their respective obligations as set out under the agreement. The agreement categorically mentions that the unit of the complainant was tentative and is subject to change during the completion of the construction of the said project and the same shall be confirmed to the complainant during the offer of possession.
- vi. That in light of the said clauses, it was categorically agreed between respondent no. 2 and the complainant, it is submitted that the unit allocated to the complainant was tentative and subject to change. That the unit of the complainant was changed and the new unit no. 09-905 on the 9th floor was allotted to the complainant which was duly communicated in year 2014 to the complainant. That the complainant was very well aware of the allocation of the unit and the complainant wrote an email dated 15.05.2014 in this regard. That it was clarified vide 22.05.2014 that the reallocation was done to accommodate all the leased units together. The respondent no. 2 had also raised the demand for VAT under the Haryana Value Added Tax Act, 2003 dated 23.11.2016 wherein unit no. 09-905 was categorically mentioned.

That the complainant did not raise the objections qua the change in the unit at that point of time and even had made payment of the demand of VAT on 24.04.2017, without any protest whatsoever, thereby giving consent to the change in the unit of the complainant.

- vii. Furthermore, the proposed due date of the delivery of possession, as per clause 2.1 of the agreement was 31.12.2011, however the same was subject to the clause 9 (force majeure) and strict adherence to the terms and conditions of the agreement by complainant/allottee. That the construction of the unit was hampered due to and was subject to the happening of the force majeure and other circumstances beyond the control of the company, the benefit of which is bound to be given to the respondent no. 2 in accordance with clause 9 of the agreement.
- viii. That, the respondent no. 2 was faced with certain force majeure events including but not limited to the non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana were stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of materials difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued.

despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by Respondent No. 2 to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, respondent no. 2 completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. That the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- ix. That all these circumstances come within the purview of the force majeure clauses and hence allow a reasonable time to the respondent/ builder. It must also be noted that respondent no. 2 had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 9 of the agreement, however, despite all the hardships faced by respondent no. 2, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities. Furthermore, it needs to be seen that the development of the unit and the project as a whole is largely dependent on the fulfillment of the obligation of the allottees in timely clearing their dues. That the due date of the offer of possession was also dependent on the timely payment by the complainant, which, the complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainant had delayed the payment against the unit.
- x. Despite there being a number of defaulters in the project, respondent no. 2 had to infuse funds into the project and have diligently developed the project

in question. It was the obligation of the complainant to make the payments as per the adopted payment plan and agreed terms and conditions of the agreement. That the demand letters were raised as per the agreed payment plan however, the complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainant from time to time. That the respondent no. 2 is also essential to be highlighted in this instance, who had served request letters at every stage and reminder notices in case of non-payment.

- xi. That it must be noted by the Authority that despite the default caused, the answering respondent applied for an occupation certificate in respect of the said unit on 21.05.2018 and the same was thereafter issued vide memo bearing no. ZP-354/SD(BS)/2018 dated 09.10.2018. Once an application for the grant of an occupation certificate is submitted for approval in the office of the concerned statutory authority, answering respondent cease to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the computation of the time period utilized for the implementation and development of the project.
- xii. That even after the defaults of the complainant, respondent no.1 completed the construction of the unit and offered the possession of the unit to the complainant on 19.11.2018 and earnestly requested the complainant to take

possession of the unit after remittance of the balance sales consideration of the unit. However, the complainant had failed to take possession of the unit. After the receipt of the offer of possession dated 19.11.2018, the complainant approached respondent no. 2 to address certain alleged grievances in respect to the unit. That the respondent no. 2 acting in utmost bonafide conduct, addressed all the alleged grievances of the complainant, and the respondent no. 2 offered a settlement offer to the complainant of Rs.5,36,654/-. The complainant had to make the payment of Rs.4,89,333/- for enforcing the settlement terms, which was subsequently done by the complainant, and a payment receipt dated 12.02.2019 for Rs.4,89,333/- was generated in favour of the complainant. The complainant had also made a payment of Rs.10,366/- as TDS for which, form 16B was also submitted.

- xiii. That the offer of the respondent no. 2 was duly accepted by the complainant which was also noted in the full and final settlement dated 12.02.2019. That after the acceptance of the same, the complainant made payment in terms of the settlement. That not only did the complainant accept the said offer and execute a full and final settlement but has also acted upon it, therefore making it binding and enforceable. Moreover, the consensus ad idem between the parties is also established by the fact that on the said settlement letter, the parties have counter signed by separately noting the final settlement of the account.
- xiv. That the essence of a valid contract, as per the Indian Contracts Act, 1872, are, offer, acceptance, and consideration. The offer of respondent no. 2 for full and final settlement was unequivocally accepted by the complainant. The consideration of the same was also exchanged between the parties when pursuant to the terms of the offer, the complainant made the due payment on 12.02.2019 and the respondent credited the compensation to the complainant. That the essence of a valid contract having been met and the

fact that the parties had consensus ad idem in regards to the fact that no further claim can be raised in respect of the agreement and the Act, the present claim cannot be raised, under any manner whatsoever and hence, the present claim is bound to be dismissed. That it is a settled law the settlement between the parties being a valid contract, is enforceable in law. Since the facts and circumstances of the present case reveal that the settlement between the parties involved offer, acceptance, reciprocal promises, and consideration, it is a valid contract enforceable in law not only in terms of the aforementioned pronouncement of the Hon'ble Apex Court but also the pre-requisites of Section 10 of the Indian Contracts Act, 1872; and the complainant cannot be oblivious of the same.

- xv. That after the settlement of the accounts, multiple emails for handover of possession have been made by the respondent, however, the complainant had failed to come forward and take possession. Moreover, the respondent no. 2 has been continuously requesting the complainant to take possession of the unit and deposit the stamp duty charges for execution of the conveyance deed vide emails dated 21.06.2019 and 14.08.2020. However, the complainant did not pay any heed to the legitimate, just, and fair requests of respondent no. 2 and threatened the respondent with the institution of unwarranted litigation. All requests of the respondents to take possession of the unit fell on deaf ears of the complainant.
- xvi. That the complainant was offered the possession on 19.11.2018 and was also requested to take possession and make the outstanding payment as per the agreed terms and conditions of the agreement. That the allottee defaulted in making the payment and in taking the handover of the unit. That in such a circumstance, the allottee was bound to pay the maintenance charges from the date of the offer of possession along with the holding charges as also agreed under clauses 6.4 and 2.3 of the agreement. That a similar obligation

of the allottee to pay the maintenance charges and holding charges in case of the failure of the allottee to take the possession of the unit has been noted in the model agreement to sell provided in the Rules of 2017.

- xvii. The mandatory obligation of the complainant to make the due payments against the unit, which under no circumstance whatsoever, can be escaped. Hence, on the basis of the above-mentioned grounds the present complaint is liable to be dismissed.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.
9. The complainant and respondent have filed the written submissions on 30.04.2025 and 06.05.2025 respectively which are taken on record and have been considered by the authority while adjudicating upon the relief sought by the complainant.

E. Jurisdiction of the Authority

10. 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

11. 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

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

F. Findings on the objections raised by the respondent.

F.1 Objection with regard to mis-joinder of respondent no. 1 in the complaint.

14. While filing the complaint the complainant sought relief against M/s Countrywide Promoters Private Limited and M/s Anjali Promoters and Developers Private Limited being the developers of the project. On failure to fulfil their obligation to complete the project by the due date, the complainant approached the authority seeking relief of delay possession charges and others against the allotted unit. On the other hand, the respondent no. 2 raised a preliminary objection to w.r.t. deletion the name of respondent no. 1 from the array of parties. That the respondent no. 1 is not effective and vide order bearing no. CP (CAA) 26/Chd/Hry/2023 dated 20.09.2024 passed by Hon'ble NCLT, Chandigarh, the respondent no. 1 company has transferred its assets to the transferee company. That the respondent no. 1 is not a separate legal entity as on date and no legal action can be proceeded against the respondent no. 1, hence, the name of the respondent no. 1 should be deleted from the array of parties.
15. In view of the same, the name of respondent no. 1 (M/s Countrywide Promoters Private Limited) is deleted from the array of party in terms of the order dated 20.09.2024, in complaint bearing no. CP (CAA) 26/Chd/Hry/2023 passed by the Hon'ble NCLT, Chandigarh.

F.II Objections regarding force majeure.

16. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as non-availability of raw material due to various orders of the High Courts, NGT, regulating the mining activities, brick kilns, regulation of construction and development activities by the judicial authorities in NCR on account of environmental conditions, restrictions on usage of water, etc. Stay on mining operations as per the orders of the NGT, etc. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time and these are the circumstances taking place in normal course. Thus, the respondent/promoter cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.

G. Findings regarding relief sought by the complainants.

- G.1 Direct the respondent to pay delay possession charges at the prescribed rate of interest as prescribed under Rule 15 of the Rules of 2017 from the promissory date of delivery of the subject unit i.e., 31.12.2011, till the date of actual handover of possession of the subject unit in view of section 18 of the Act of 2016.**

17. The complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by them as provided under the proviso to section 18(1) of the Act which reads as under: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

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

18. Clause 2.1 of the apartment buyer's agreement (in short, the agreement) dated 01.07.2011, provides for handing over possession and the same is reproduced below:

2 Possession

2.1 The possession of the said premises shall be endeavored **to be delivered to the intending purchaser by 31st December 2011**, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser.

2.2 The intending purchaser shall only be entitled to the possession of the said premises after making full payment of the consideration and other charges due and payable. Under no circumstances shall the possession of the said premises be given to the intending purchaser unless all the payments in full, along with interest due, if any, have been made by the intending purchaser to the intending seller. However, subject to full payment of consideration along with interest by the intending purchaser, **if the intending seller fails to deliver the possession of the said premises to the intending purchaser by 30th June 2012**, however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending Purchaser, then the intending seller shall be liable to pay penalty to the intending purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said premise by giving appropriate notice to the intending purchaser in this regard. If the intending seller has applied to DTCP/any **other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by June 2012 is attributable to any delay on part of DTCP/ competent authority**, then the Intending Seller shall not be required to pay any penalty under this clause.

(Emphasis supplied)

19. The Authority has gone through the possession clause of the agreement and observes that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the Authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the Authority given below.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date 06.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10% per annum.
23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

24. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
25. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of space buyer's agreement executed between the parties on 01.07.2011, the possession of the booked unit was to be delivered by 30.06.2012. The occupation certificate was granted by the concerned authority on 09.10.2018 and thereafter, the possession of the subject flat was offered to the complainant vide letter dated 19.11.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 01.07.2011 to hand over the possession within the stipulated period.
26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 09.10.2018. The respondent offered the possession of the unit in question to the complainants only on 19.11.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a

lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (19.11.2018) which comes out to be 19.01.2019.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession at prescribed rate of interest i.e., 11.10 % p.a. w.e.f. 15.05.2017 till the expiry of 2 months from the date of offer of possession (20.10.2018) which comes out to be 20.12.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G.II Direct the respondent to handover the possession of the subject unit after taking requisite approvals from the competent authorities.

28. In the present complaint, the complainant is seeking the said relief with respect to handover the physical possession of the allotted unit of the complainant, with all the amenities promised by the respondent company.
29. During proceeding dated 18.03.2025, the counsel for the complainant brought to the notice of the Authority the complainant has taken over the physical possession of the allotted unit on 31.01.2025 by the order of this Authority. So in view of the above, no direction can be given in this regard.

G.III Direct the respondent to execute a conveyance deed in favour of the present complainant in view of section 17 of the Act of 2016.

30. The complainant is seeking the relief for the registration of conveyance deed in accordance with section 17 of the Act of 2016. The respondent/promoter has obtained the occupation certificate on 09.10.2018 thereafter, the respondent offer the possession on 19.11.2018. The complainant had taken the physical possession of the unit on 31.01.2025. Whereas the possession was offered by the respondent/promoter obtaining the occupancy certificate as per clause 5 of the

buyer's agreement, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favor of the allottee but only after receiving full payment of total price of the apartment and the relevant clause of the agreement is reproduced for ready reference: -

"5. Conveyance Deed and stamp Duty:

5.1 Subject to the payment of full Consideration, other charges/payments and adherence to the terms and conditions of this Agreement by the Intending Purchaser, the Intending Seller shall arrange to execute an appropriate Conveyance/Transfer/ Sale Deed so as to sell, transfer and convey its rights, title, and interest pertaining to the said Premises in favour of the Intending Purchaser or its nominee as the case may be. However, the Intending Purchaser shall, on his/her/its/their part be responsible and bound to execute the appropriate Conveyance/Transfer/ Sale Deed as and when called upon to do so by the Intending Seller. Failure to get the deed executed when called upon by the Intending seller will be at the sole risk, cost and consequences of the Intending Purchaser, including but not limited to termination of this Agreement. If the Intending Purchaser later requests to get the deed executed, then all the costs including cost of making signatory available on behalf of Intending Seller for execution of deed will be borne by Intending Purchaser.

5.2 The obligations undertaken by the Intending Purchaser herein shall survive and be read as a part of the Conveyance Deed. The obligations and covenants of the Intending Purchaser shall run with the said Premises and be enforceable at all times against the Intending Purchaser, its transferees, assignees or successors in interest.

5.3 The cost of stamp duty, legal charges and registration charges of the Conveyance/Sale/Transfer Deed or any other documents/charges required to get the Deed executed under this Agreement shall be borne by the Intending purchaser."

31. It is to be further noted that section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the unit along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016 and shall get the conveyance deed done after obtaining of occupation certificate.

32. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17(1) of the Act provide for transfer of title and the same is reproduced below:

"Section 17: Transfer of title.

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

33. As OC of the unit has been obtained from the competent authority on 09.10.2018, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority directs the respondent/promoter to execute the conveyance deed in favour of the complainants after payment of requisite stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order

G.VI Direct the respondent not to charge any maintenance charges till physical possession of the subject unit is not handed over to the complainant or in alternative the respondent shall be directed to charge maintenance charges only after physical possession of the subject unit has been handed over to the present complainant in the best interest of justice.

34. On the basis of document and submissions made by both the parties, the Authority observes that the respondent is entitled to charge maintenance charges as per clause 6 of the buyer's agreement with respect to **Statutory Taxes, Maintenance and other Dues**. The respondent had obtained the occupation certificate from the competent authority on 09.10.2018 from the competent authority and thereafter, offer the possession on 19.11.2018. The Authority observes that after issuance of occupation certificate, it is presumed that the building is fit for occupation. In multi-storied residential and commercial complexes, various services like security, water supply, operation and maintenance of sewage treatment plant, lighting of common areas, cleaning of common areas, garbage collection, maintenance and operation of lifts and generators etc. are required to be

provided. Expenditure is required to be incurred on a consistent basis in providing these services and making available various facilities. It is precisely for this reason that a specific provision is incorporated in the builder buyer's agreement, as per clause 6, that the maintenance charges as may be determined by the respondent would be liable to be paid by the allottee.

35. The Authority has gone through the buyer's agreement and as per clause 1.7 of the buyer's agreement the respondent is charging the interest @ 18% per annum for any delay in making payment. The agreement in the pre-RERA agreement and clauses of such buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the interest for delayed payments as held by Hon'ble Apex court in plethora of judgements. The promoter cannot be allowed to take undue advantage of his dominate position. Further, it is pertinent to mention here that interest' as defined under section 2(zd) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced in para 20 of the said order.
36. Therefore, interest on the delay payments/maintenance dues from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges. Thus, the respondent can charge interest on the outstanding maintenance charges at the prescribed rate i.e., 11.10% from the complainant as prescribed under 2(zd) of the Act of 2016.

G.V Direct the respondent to not charge any holding charges.

37. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale

consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

38. Moreover, the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

H. Directions of the authority: -


39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -

- i. The respondent/promoter is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 11.10% per annum for every month of delay from due date of possession i.e., 30.06.2012 till 19.01.2019 i.e. expiry of 2 months from the date of offer of possession (19.11.2018) as per proviso to section 18(1) of the Act read with rule 15 of the rules. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules after adjustment of outstanding amount towards complainant.
- ii. The respondent is directed to issue a fresh statement of account within a period of 30 days from the date of this order after adjustment of delayed possession charges as 'referred above' and also adjustment of outstanding maintenance charges. The equitable rate of interest at the prescribed rate i.e., 11.10% shall be levied on the outstanding amount towards the complainant as prescribed under the section 2(za) of the Act 2016.
- iii. The respondent is directed to get the conveyance deed of the allotted unit executed in the favour of complainant in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

iv. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement. The respondent is debarred from claiming holding charges from the complainant /allottee at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

40. Complaint as well as applications, if any, stand disposed off accordingly.

41. File be consigned to the registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.05.2025

HARERA
GURUGRAM