



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint nos.:	326 of 2024
Date of filing:	29.02.2024
Date of first hearing:	08.07.2024
Date of decision:	05.05.2025

Kashinath and Chitra

R/o 18/162, Aggarwal Colony,
Gali no.1, Bahadurgarh, Jhajjar
Haryana-124507.

....COMPLAINANTS

VERSUS

1. M/s Gnex Realtech Private Limited

through its Managing Directors/Partners/Authorised Representative
Registered office at B-10, Lawrence Road,
Industrial Area, Delhi – 110035

2. Basant Sharma

B-10, Lawrence Road,
Industrial Area, Delhi – 110035

3. Shyam Pandey

B-10, Lawrence Road,
Industrial Area, Delhi – 110035

4. Amresh Mishra

B-10, Lawrence Road,

Industrial Area, Delhi – 110035

.... RESPONDENTS

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Ms. Anuradha, counsel for the complainants, through VC.

Mr. Viren Sibel, Counsel for the respondent no.1, through VC.

None present for respondent no.2,3 and 4.

ORDER (NADIM AKHTAR -MEMBER)

1. Present complaint has been filed on 29.02.2024 by the complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by the complainants, sale consideration, the amount paid by the complainants and details of project are given in following table:



S.No.	Particulars	Details
1.	Name of the project	"Asha-Bahadurgarh, Phase-III"
2.	Plot no. and area	C-019 admeasuring 122 sq. yards.
3.	Date of allotment to original allottee Mr. Niranjana Sharma	14.12.2017
4.	Date of Agreement for Sale	14.11.2018
5.	Due date of offer of possession	14.01.2020
6.	Possession clause	<p>8.1. Schedule for possession of the Plot:</p> <p><i>The Company agrees and understands that timely delivery of possession of the Plot for residential usage to the Allottee as provided under Rule 2(1)(f) of the said Rules, is the essence of this Agreement.</i></p> <p><i>The Company assures to hand over possession of the Plot for residential usage as detailed in Schedule E of this Agreement unless there is delay due to Force Majeure, Court orders, Government policy/ guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh, Phase- III project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled</i></p>



		<p>to the extension of time for delivery of possession of the Plot for residential usage.</p> <p>Schedule "E" details of timelines for handing over the possession of the plot:</p> <p>The Company shall make all efforts to complete the development and handover the possession of the said Plot within twelve (12) months plus two (02) months grace period from the date of signing of this Agreement subject to Force Majeure, Court orders, Government policy/guidelines, decisions affecting the regular development of the ASHA-Bahadurgarh, Phase- II project. If, the completion of the said Project is delayed due to the above conditions, then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the Plot for residential usage.</p>
7.	Basic sale price	₹ 19,52,000/-
8.	Amount paid by complainants	₹8,78,400/- (as per receipts attached with complaint file)
9.	Offer of possession	No



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Complainants made followings submissions as under:

- (i) Case of the complainants is that complainants purchased a plot no. C019 from Sh. Niranjana Sharma who was the first allottee and the same was allotted to them in 2017 in the project namely; "ASHA BAHADURGARH PHASE-III" at Sector 36, Bye-pass Road, Bahadurgarh, Haryana by paying ₹13,00,000/- to the first allottee, which was inclusive of two instalments which he paid first at the time of booking of ₹1,95,200/- on 08-12-2017 and the second instalment of ₹4,88,000/- on 11-04-2018. Receipts are attached herewith as Annexure- 2(colly).
- (ii) Thereafter present complainants entered into the Agreement For Sale for the plot no. C019 in "Asha Bahadurgarh, Phase-III" on 14-11-2018 before the Sub Registrar and hence complainants are allottees within the meaning of Section 2 (d) and Section 2 (zg) of the Real Estate (Regulation and Development) Act, 2016. Copy of the said Agreement for Sale is attached as Annexure- 1(Colly).
- (iii) Complainants made total payment of ₹8,78,400/- to the respondents till date which is mentioned in the Agreement for Sale of dated 14-11-2018.
- (iv) That the complainants used to visit the site on a regular basis. It is pertinent to mention here that at the site there was no development till



2022 and there was delay of more than 3 years from the promised date of delivery of the plot with all the facilities mentioned in the brochure.

- (v) That complainant no.1 was living on rental accommodation due to Covid, he shifted at complainant's no. 2 address. That the address belonging to complainant no. 2 is her permanent address. That the complainants never received any demand notice from the respondents even whenever the complainants visited at the site of the respondents or any person in the office never informed of any demand notice. Moreover, there was no development on the site, hence, the complainants constantly checked from the office of the respondents to know the status and complainants received same answer that due to covid, development is suspended and the complainants will get information once the work will resume and demand will be raised.
- (vi) The complainants were under impression that the respondents will send the demand letter as due to Covid 19 the development is stopped. However, the complainants never received any demand notice from the respondents at any point of time. That complainants are still using the same mobile number which he was using at the time of booking (Agreement for Sale) of the plot and even the e- mail id which was shared at the time of the Agreement for Sale.
- (vii) That complainants approached the bank officials Indiabulls, details of which were provided by the developer and applied for the loan.



However, the same could not be approved as the respondents did not provide "OC". Hence, despite the fact that complainants received the sanction letter, the complainants could not get the loan approval. The sanction letter provided by the Indiabulls is attached as Annexure-C(Colly).

(viii) That in the month of September 2023, the complainant no. 1 received a call from the office of the respondents and informed that the respondents has cancelled/terminated the booking of the complainant's plot no. C019 as the complainants have not made the payments on demand issued by the respondents to the complainants. That the complainants visited the office of the respondents and on enquiry the complainants were shown the delivery of demand letter to the complainants as well as the tracking report.

(ix) That the complainant no.1 told that he has left the rental premises during the time of Covid 19 (2020) and since then both the complainants are residing together at the given address of the complainant no. 2. It is pertinent to mention here that at the time of booking/Agreement for Sale the addressees of both the complainants were provided to the respondents as well as the E-mail address of the complainants but till date no Demand letter was sent through E-mail or to the complainant no.2.



- (x) That the respondents did not send the demand letter to the complainant No.2 as the property was booked in the name of two Applicants i.e., complainant No.1 and complainant No. 2 as joint owners. That even e-mail ids of both the complainants were provided to the respondents but the respondents not even bothered to send one email or call to any of the complainants.
- (xi) That the respondents have never served any demand letter to the complainants, not a single call was made to the complainants, only one call received in the month of September 2023 that the complainants have not made payment of the Demand raised by the respondents. That the respondents could call or send Demand letter/notice to the complainants on their phone for the purpose of raising the Demands Letter.
- (xii) That the complainant no.1 received a call from the office of the respondents for cancellation of the Plot of the complainants. It pretends that the respondents did not inform the complainants deliberately and intentionally, at this stage the respondents are giving information that the said plot is cancelled/ terminated for non-payment and also informed the complainants can collect the paid money after deductions as per rules.



C. RELIEFS SOUGHT

4. Complainants have sought following reliefs:

- (i) Pass an order to direct the respondents to handover the possession of the said unit to the complainants.
- (ii) Pass an order to direct the respondents to restore the plot i.e., No. C019, having area 122 Sq. yds, (Plot Area) Project name ASHA-Bahadurgarh, Phase- III, Haryana, with immediate effect to the complainants by declaring the Cancellation Letter, if any, issued as confirmed on phone call on dated 04-09-2023 which is illegal, arbitrary, null, void, ab-initio, non est and not binding upon the complainants in any manner whatsoever;
- (iii) Pass an order to direct the respondents not to alienate, sell, transfer, mortgage the said plot and not to create any third party interest or charge thereon;
- (iv) Pass an order, directing the respondents to waive off so called unnecessary and unwarranted Holding Charges;
- (v) Pass an order, directing the respondents to waive off so called unnecessary and unwarranted interest charged by respondents from complainants;
- (vi) Pass an order to direct the respondents to pay the interest at the prescribed rate of 18% per annum on the amount of ₹8,78,400/- which



has been paid by the complainants to the respondents against the sale consideration.

(vii) Pass an order to pay the penalty/Delay Possession Charges to the Complainants on account of delay in delivering possession of the Unit/plot;

(viii) Pass an order to direct the respondents to pay an amount of ₹75,000/- to the complainants as cost of the present litigation;

(ix) Any other relief/order or direction, which this Hon'ble Authority may deem fit and proper considering the facts and circumstances of the present complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

5. As per reply dated 14.11.2024, respondents had made following submissions that present complaint is not maintainable on following grounds:

(i) That the respondents have not violated any of the provisions of the RERA Act of 2016 and the present complaint is being premature and complainants having themselves breached their contractual obligations by not making timely payments as agreed.

(ii) That the complaint is liable to be dismissed as the Agreement for Sale executed between the complainants and the respondents provides that the estimated time of delivery was subject to the other terms and conditions of the said Agreement. The respondents had sent various



communications, issued several demand notices and reminder letters to the complainants on numerous occasions asking them to pay the outstanding dues, however, the complainants did not give any heed to the said communications and never came forward to pay the outstanding amounts within the specified timeframe. The complainants have themselves defaulted in adhering to the terms of the said Agreement and now they cannot attribute their own faults upon the respondent.

(iii) That no right to sue survives in favor of the complainants to file the present complaint against the respondents as the booking of the complainants has already been terminated by the respondents and the amount paid by the complainants towards purchase of the said unit has also been refunded back by the respondents in the Bank Account of the complainants.

(iv) That the termination of the complainants booking was strictly in adherence to the provisions of the Agreement for Sale dated 14.11.2018. The respondents did not cancel the allotted plot out of its own wishes, rather the said booking was terminated on account of non-payment of outstanding amount towards purchase of the said unit. Clause 10.3 of the said Agreement for Sale provides that in case the allottee fails to make payments for two consecutive demands, the allottee shall be liable to pay interest to the respondents on the unpaid



amount at the rate which is MCLR plus 2%. The said clause further provides that in case the allottee continues the default for a period of more than 90 days, the company/respondents shall cancel the allotment of the unit.


(v) In the present case, the complainants have defaulted in making payments of the outstanding amount for a period of more than four years which is in sheer violation of the provisions of the said Agreement for Sale. It was categorically specified in the said Agreement for Sale that timely payment of the sale consideration was the essence of the Contract.

(vi) That neither it was agreed between the complainants and respondents in any communication, nor it was anywhere mentioned in the said Agreement for Sale that payment shall be made only after approval/disbursement of loan by the Bank of the complainants. Arrangement of funds and payment of the sale consideration was the sole obligation of the complainants and the same cannot be inflicted upon any third party. It was not the concern of the respondents as to how the complainants had to arrange funds for purchasing the said unit. Further, it was specifically agreed between the complainants and the respondents vide the said Agreement for Sale that in case the complainants delay in making payments of the instalments, the respondents shall levy interest upon the said period of delay.



(vii) That it was specifically agreed in the Agreement for Sale dated 14.11.2018, that all the notices/letters/communications will be sent at the complainant No.1 address: Singhana Road, Gali No. 01, Mohalla Keshav Nagar, Narnaul, Mahendragarh, Haryana 123001, therefore, the question of not sending the demand letters at the address of/complainant No.2/second applicant does not arise at all. It is pertinent to mention here that the said Agreement for Sale also provided that all the communications by the respondents shall be sent at the address of the First Allottee/Complainant No.1 and accordingly, the respondents have sent all the communications/letters etc. at the address of the complainant No.1 and he has duly received all the said letters.

(viii) It is admitted only to the extent that in 2018, the present Complainants entered into the Agreement for Sale for the suit plot, i.e., "C019" in "Asha Bahadurgarh, Phase- III" on dated 14.11.2018 before the Sub Registrar, with the respondent/ company. In fact the complainants have not even purchased the said Unit directly from the Respondents. That the plot in question was initially allotted to Mr. Niranjana Sharma S/o Mr. Om Prakash vide Allotment Letter dated 14.12.2017 and he had transferred the said Unit in the name of the complainants in the month of September, 2018.



- (ix) That till the date of said transfer, Mr. Niranjana Sharma (the erstwhile allottee) had paid an amount of ₹6,83,200/- towards part- payment of the sale consideration of the said unit and upon transfer of the said unit in the name of the complainants, the partly paid sale consideration of ₹6,83,200/- was adjusted in the name of the complainants. That the complainants have cooked up a false and frivolous story that the complainants have paid ₹13,00,000/- to the erstwhile allottee as the said contention of the complainants is not supported by any documentary proof. Even otherwise, the said contention of the complainants is not at all relevant to the facts and circumstances of the present case.
- (x) Till date complainants had made payment of ₹8,78,400/- to the respondents which is mentioned in the Agreement for sale dated 14.11.2018. That the complainants have made self-contradictory statements as on one hand, the complainants have alleged that the complainants considered booking a plot measuring 122 Sq. Yds. and paid an advance/booking amount of ₹1,95,200/- on 11.04.2018 while on the other hand they are alleging that the said instalment of ₹1,95,200/- was paid by the erstwhile allottee.
- (xi) That the complainants never approached the respondents to book a plot in the project of the respondents, rather the complainants had approached the erstwhile allottee of the said unit directly by



themselves and after their mutual arrangement, the said erstwhile allottee approached the respondents for transfer of his unit in the name of the complainants. Even the Payment Receipt for the said instalment mentions the name of the erstwhile allottee Mr. Niranjana Sharma and not in the name of the complainants as the said amount was paid by him only. That subsequent to transfer of the said unit in the names of the complainants, they have paid merely a sum of ₹1,95,200/- on 14.09.2018 and since then no amount has even been received from the complainants towards sale consideration of the said unit. That the total sale consideration of the said plot was fixed at ₹19,52,000/- out of which the complainants have paid only a sum of ₹8,78,400/- and have never paid the remaining sale consideration despite numerous verbal and written requests made by the respondents in this regard.

- (xii) It is denied that the complainants used to visit the site on a regular basis, at the site there was no development till 2022 and there was delay more than 3 years from the promised date of delivery of the plot with all the facilities mentioned in the brochure. It is further denied that the complainants were living in the rental accommodation and due to covid he shifted at the address of complainant no. 2. It is further denied that the address belonging to complainant no.2 is her permanent address.



(xiii) It is denied that the complainants never received any demand notice from the respondents even whenever the complainants visited at the site of the respondents or any person in the office never informed for any demand notice. It is denied that the person met at the site told that the complainants will receive demand letter only then the complainants will deposit the money, even otherwise the work is suspended. The complainants have to pay the amount on demand till then no need to visit as the work will start and demand will be raised by the developers. The complainants were under impression as the assurance was given to them that the respondents will send the demand letter as due to Covid 19 the development is stopped.

(xiv) It is denied that the complainants never received any demand notice from the respondents at any point of time and the complainants is still using the same mobile number which he was using at the time of booking (Agreement for Sale) of the plot and even the e-mail I'd which was shared at the time of the Agreement for Sale.

(xv) That post execution of Agreement for Sale dated 14.11.2018 between the complainants and the respondent, the complainants neither visited the project site at any point of time, nor made any communication with the representatives of the respondents nor paid any further amount towards sale consideration of the said Unit.



- (xvi) That the respondents issued numerous demand letters and reminder letters dated 13.08.2019, 09.09.2020, 30.09.2020, 01.11.2020, 21.01.2021, 12.04.2021, 28.06.2021, 15.02.2022, 13.07.2022 and 01.08.2022 to the complainants requesting them to pay the outstanding amount towards purchase of the said plot. However, the complainants did not pay any heed to the said letters and communications. That all the communications and letters made/sent by the respondents were sent on the same address which was given by the complainants at the time of booking the said plot.
- (xvii) That in the said Agreement for Sale dated 14.11.2018, it was specifically mentioned that all the notices and communications shall be sent to the allottees at their address: Singhana Road, Gali No. 01, Mohalla Keshav Nagar, Narnaul, Haryana, Mahendragarh, Haryana-123001 and that the notices shall be deemed to be duly served if they are sent at the said address of the complainants through Registered Post. Therefore, the complainants cannot now allege that the respondents should have sent the letters and communications at the address of the Complainant No.2.
- (xviii) It shall be the duty of the Allottee to inform the Company of any change subsequent to the execution of this Agreement in the above address by Registered Post failing which all the communications and



letters posted at the above address shall be deemed to have been received by the Allottee.

- (xix) It was the duty of the complainants to inform the respondents in case they wished to change their communication address, however, in the present case, the complainants have not informed the respondents at any point of time about the alleged change and thus, in absence of any such communication, the complainants cannot now allege that the respondents did not send the notices/letters at the correct address.
- (xx) That clause 36 of the said Agreement for Sale provides that in cases where the plot is purchased by joint allottees, all the communications shall be sent by the Company at the address of the First Allottee. In the present case, the complainant No.1 was the first allottee and therefore, all the communications were to be made only at his address and not at the address of the complainant No.2. A copy of the Agreement for Sale executed between the Complainants and the Respondents is annexed herewith as Annexure-R-1. Further, the copies of the said Demand & Reminder Letters dated 13.08.2019, 09.09.2020, 30.09.2020, 01.11.2020, 21.01.2021, 12.04.2021, 28.06.2021, 15.02.2022, 13.07.2022 and 01.08.2022 sent to the complainants are annexed herewith as Annexure-R-2 (Colly.).
- (xxi) It is denied that the complainants approached the bank officials of Indiabulls details of which were provided by the developer and



applied for the loan but the same could not be approved as the respondents did not provide "OC", hence, despite of the complainants received the sanction letter the complainants could not get the loan approvals. That the respondent No.1 has never denied to provide any, document to the complainants till date. The complainants have failed to place on record any document or communication wherein the complainants have requested the respondents to provide any such letter.

(xxii) That the respondent No.1 even sent a letter dated 13.08.2019 to the complainants whereby the respondents had requested the complainants to pay their outstanding dues and further informed them that respondent No.1 has already provided the requisite NOC from Indiabulls Housing Finance Ltd. to PNB Housing Finance Ltd. and the complainants can submit their loan documents to the said bank in case they wish to avail the facility of bank loan. A copy of the said letter dated 13.08.2019 is annexed as Annexure-R-3.

(xxiii) That arranging funds for purchase of the said unit was not the responsibility of the respondents and it was nowhere mentioned in the Agreement for Sale that payment of sale consideration was subject to approval of loan by the banks of the complainants.

(xxiv) It is correct to the extent that in the month of September 2023 the complainant no.1 received a call from the office of the respondents



and informed that the respondents have cancelled/terminated the booking of the complainant's plot no. C019 as the complainants have not made the payment on demand.

(xxv) It is further denied that the complainant no.1 told that he has left the rental premises during the time of Covid 19 (2020) and since then both the complainants are residing together at the given address of the complainants no.2. It is further denied that at the time of booking/Agreement for sale the addresses of both the complainants were provided to the respondents as well as the E-mail address of the complainants but till date no demand letter was sent through E-mail or to the Complainant no.2.

(xxvi) That the complainants have averred in the para under reply that due to covid the complainant No.1 shifted at the address of complainant No.2, however, as per the Consignment Tracking Report of the Reminder Letter dated 21.01.2021 and the Final Opportunity Letter dated 01.08.2022 issued by the respondents to the complainants at the address: Singhana Road, Gali No. 01, Mohalla Keshav Nagar, Narnaul, Mahendragarh, Haryana 123001, the said letters were duly received by the complainant No.1 on 29.01.2021 and 06.08.2022 respectively. This fact is more than sufficient to prove that the complainants have stated blatant lies in the present complaint and the complainant No.1 has never changed his address at any point of time.



Moreover, it was the duty of the complainants to inform the respondents that they have changed their address and that all the communications in future should be sent to their fresh address. It is further stated that the complainants have failed to attach any such proof as the complainants have never changed their address and have just made up a coke and bull story out of their own imagination in the para under reply. The copies of the Consignment Tracking Reports of the Reminder Letter dated 21.01.2021 and Final Opportunity Letter dated 01.08.2022 are annexed as Annexure-R-4 (Colly.).

(xxvii) It is further stated that the complainants never shared their email ID with the respondent, either at the time of booking the said unit or at any later stage. Moreover, when the said Agreement for Sale itself mentions that all the notices/communications/letters will be sent at the abovementioned address of the complainant No.1 and all the said letters have been duly received by him at the said address, then the question of sending notices via email does not even arise. Furthermore, the respondents were under no obligation to send demand letters or notices to the complainants via email.

(xxviii) That section 19 (6) & (7) of the Real Estate (Regulation and Development) Act, 2016 specifically provides that an allottee is liable to pay interest to the promoter in case of any delay in payment towards sale consideration. Therefore, it is clear from the above stated facts



and provisions of law that the respondents were entitled to terminate the booking of the complainants upon their default in making payment of instalments for a period of 90 days. However, considering the association of the complainants with the respondent, the respondents waited for four years before initiating the termination process.

(xxix) That after termination of the said unit, the respondents requested the complainant No.1 on numerous occasions to share their updated KYC and bank account details so that their deposited amount can be refunded as the KYC and Bank A/c details of the complainants available in the records of the respondents were of the year 2018. However, the complainants never shared their updated KYC and bank account details to the respondents rather, they got issued a Legal Notice dated 03.11.2023 to the respondents through their Advocate. Finding no alternative, the respondent No.1 decided to refund the deposited Amount of the complainants in their source account through which the complainants had paid their instalment in the year 2018.

(xxx) That the respondents also issued a letter dated 11.12.2023 to the complainants informing the complainants that they have refunded the deposit amount of the complainants in their source account. The respondents also sent the said letter to the complainants on their WhatsApp Account to which the complainants replied that "*Not acceptable. How can you do it without my confirmation. I will put FIR*



on you". The said reply sent by the complainants is itself sufficient to prove that the complainants deliberately estopped the respondents from refunding their deposit amount by not sharing their update KYC and Bank A/c details with the sole intention to create a false cause of action in their favor. A copy of the said letter dated 11.12.2023 sent by the respondents to the complainant is annexed herewith as Annexure - R-5. Copy of the WhatsApp chat between the complainants and the respondent No.1 is annexed herewith as Annexure-R-6.

E. REJOINDER SUBMITTED BY THE COMPLAINANTS

6. Complainants made following submissions:
- (i) Complainants have denied receiving any reminder letters and termination letters, emails, whatsapp messages and call from respondents and respondents have illegally terminated the booking.
 - (ii) That the respondents deducted ₹3,44,717/- as interest amount and remaining ₹6,83,200/- deposited in the account of the Complainant No. 1 on dated 11-12-2023.
 - (iii) That it is wrong, and denied that the complainants have defaulted in making payments of the outstanding amount for a period of more than four years which is in sheer violation of the provisions of the said Agreement for Sale.
 - (iv) That the respondents mislead the Complainants that the project is approved and loan is easily available on this property, whereas the



complainants applied for the loan but the respondents could not provide the necessary approvals, i.e, Occupation Certificate. The complainants further submits that the loan was also one of the issue but they never received any demand letter from the respondent, it is further submitted by the Complainants that at the time of booking surety was given by the Respondents that loan is available on this property.

(v) It is denied that it was specifically agreed in the Agreement for Sale dated 14-11-2018 that all the notices/letter/communications will be sent at the complainant No.1 address: Singhana Road, Gali No. 01, Mohalla Keshav Nagar, Narnaul, Mahendragarh, Haryana 123001, therefore, the question of not sending the demand letter at the address of/ complainant no.2/ second applicant does not arise at all, the complainants submit that the respondents did not send any notice to the Complainant no. 1 as well as to the Complainant no.2, whereas there are two Complainants/applicants for the booking of the plot as in the corona period the Complainant no.1 came to the Complainant no.1.

(vi) That no one was aware how long that pandemic period is going to stay, even there was no development at the site because the Complainants visited at booked property site twice. The person available told to the Complainants that once the development will start the respondents will inform you telephonically but no notice was received by the Respondents even no call or email was sent to them.



- (vii) That the delivery reports attached are all fake and fabricated as no notice/demand notice/letter ever served to the Complainants, even the documents attached herewith the reply are clear enough to prove the words of the complainants.
- (viii) It is submitted by the Complainants that if the fact is that all the communications were held at the first allottee, why the respondents sent termination/cancellation letter to the Complainant no.2? It is crystal clear from the act of the respondents that the respondents failed to deliver the demand notices to the Complainants.
- (ix) The Complainants submit that they applied for the loan but that was not passed as the respondents did not provide "OC" as the loan was sanctioned but it could not approve because the Respondent's negligence and not providing the required documents. It is denied that the respondents never denied to provide any document, it is further submitted by the Complainants that they have already attached Annexure -3 of dated 19- 09-2019 along with the compliant which is sectioned letter of India Bulls home loans. The Complainants also applied for loan in PNB housing in the month of December again the status was same "OC" was not provided to the Complainants or to the Bank the PNB housing loan is attached herein as Annexure - B, Indiabulls sanctioned letter is already on record, hence the respondents



cannot say that the Complainants have not attached any document along with their complaint.

- (x) It is vehemently denied that the complainants themselves made the booking cancelled. It is submitted by the complainants that they want their plot back and it should not be sold to anyone else. Even as per the section 19(6)& (7) of the Real Estate (Regulation and Development) Act 2016, specifically provides that an allottee is liable to pay interest to the promoter in case of any delay in payment towards sale consideration, it does not say the builder/developer can cancel the booking without prior information.
- (xi) It is wrong and denied that the respondents ever contacted the complainants for update KYC and bank account, the respondents after receiving the Legal notice sent by the complainants dated 03-11-2024 issued one legal notice to the complainant no.1 on his mobile and complainant no.2 at her address and also sent an email to the complainant no.1, whereas till four years the respondents never sent anything on email or on the mobile and after receding the legal notice sent by the complainants the respondents transferred some amount after deduction of late interest amount, while the respondents were the one who was enjoying the interest on the amount of the complainants.
- (xii) That the respondents sent the details of the payment on the WhatsApp whereas the respondents never contacted to the complainants for any



demand on WhatsApp or for any issue even the respondents had the contact number of the complainant no.1. It is crystal clear that after receiving the Legal Notice the respondents transfer cancellation amount in the bank account of the complainant no.1 that is also after deduction of the interest amount, it shows the clear intention of the respondent. The respondents have to give strict proves for asking of the bank details to transfer the cancellation amount or for KYC at any point of time ever asked.

- (xiii) It is again wrong and denied that the respondents have terminated the booking of the said unit made by the complainants in accordance with the provisions of the said Agreement of Sale dated 14-11-2018.
- (xiv) It is further denied that the termination was on account of non- payment of outstanding instalments by the complainants as the complainants did not pay the outstanding amounts despite receiving more than dozen demand/reminder notices, the complainants submits that the respondents have not provide strict proves that the respondents have sent dozen of demand notices to the complainants and those were ever received, it is submitted by the complainants that the respondents herein made false and frivolous submissions with no valid proves.



**F. ARGUMENTS OF LEARNED COUNSELS FOR
COMPLAINANTS AND RESPONDENTS**

7. Ld. counsel for complainants reiterated the pleadings mentioned in complainant. Ld counsel for respondent no.1 reiterated the pleading mentioned in reply and stated that account of the complainants is clear from respondent's side.

G. ISSUES FOR ADJUDICATION

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

9. In light of the facts of the case and perusal of documents placed on record, Authority observes that admittedly original allottee Mr. Niranjana Sharma booked a plot no. C-019 admeasuring 122 sq. yards in the project of respondents namely; 'ASHA Bahadurgarh Phase-III' at Sector-36, Bahadurgarh Distt- Jhajjar, Haryana-124507 and paid an amount of ₹45,200/- on 08.12.2017 and ₹4,88,000/- on 11.04.2018. Thereafter, an amount of ₹88,680/- on account of transfer charges on 11.09.2018 and amount ₹1,95,200/- on 14.09.2018 has been made by Mr. Kashi Nath, i.e., by the complainant no.1. Agreement for sale was executed between the complainant no.1 and 2, i.e, Kashi Nath & Chitra and respondents on 14.11.2018. As per clause 2.10, on page no.40 of builder buyer agreement clearly mentioned that complainants paid an



amount of ₹8,78,400/- against the sale consideration of ₹19,52,000/- (as per clause 2.1 at page no. 38).

10. As per clause Schedule E of the agreement to sale dated 14.11.2018, possession of said plot was to be given within a period of 12 months + 2 months of grace period from the date of execution of agreement to sale subject to conditions mentioned therein. Perusal of said clause reveals that respondents were under an obligation to handover possession till 14.01.2020. Till that date respondents did not hand over the possession of the plot to the complainants. Plea of the respondents is that complainants did not adhere to terms and conditions of the agreement for sale. As timely payment was essence of the contract and complainants defaulted in making payments despite sending of various reminders and demand letters dated 09.09.2020, 30.09.2020, 01.11.2020, 21.01.2021, 12.04.2021, 28.08.2021, 15.02.2022 and 13.07.2022 which are annexed as Annexure R-2 (Colly). Thereafter final opportunity dated 01.08.2022 for payment of outstanding dues was issued to the complainants. In this regard, plea of the complainants is that complainants did not received any of the communications, either demand letters or reminders letters sent by the respondents. Further, as in the year 2020, due to Covid situation complainant no.1 shifted to the address of the complainant no.2, and no communications were sent at address of the complainant no.2. Only



in September 2023, complainants received call from the respondents that plot of the complainants is cancelled. After this, complainants issued legal notice dated 03.11.2023 to the respondents and in reply to this, vide letter dated 11.12.2023, respondents informed that booking of plot no. C-019 was terminated on 10.09.2022 due to failure in making outstanding sale consideration and they have transferred an amount of ₹683200/- into the bank account towards the refund of deposited amount after deduction of 10% earnest money.

11. In this regard, Authority observes that complainant's wilfully entered into agreement for sale with the respondents for the plot no. C019 and therefore, both the parties are bound by terms and conditions of the agreement for sale. As per clause 6 of agreement for sale, *"time is the essence for the parties in respect of the obligations to be fulfilled by each party, under this agreement."* That means, complainants were bound to make timely payments as and when demands were raised by the respondents. In Schedule C (payment plan), it is expressly mentioned that *"instalment (any of them) shall become payable on demand (as per actual construction/development schedule) irrespective of their serial order in which they are listed above."* After making payment of ₹8,78,400/- as mentioned in agreement for sale, complainants did not make any payments against the consideration. Respondents had sent various demands letters and reminders as



mentioned above. In this regard, it is appropriate to refer the clauses of the agreement for sale. Clause 35 and 36 reproduced for reference:

Clause 35 of the said Agreement for Sale:

35. NOTICES:

All notices to be served on the Allottee and the Company as contemplated by this Agreement shall be deemed to have been duly served if sent to the allottee or the Company by the Registered Post at their respective addresses specified below:

In case of Allottee:

Mr. Kashi Nath/Mrs. Chitra Singhana Road, Gali No. 01, Mohalla Keshav Nagar, Narnaul, Mahendragarh, Haryana-123001

It shall be the duty of the Allottee to inform the Company of any change subsequent to the execution of this Agreement in the above address by Registered Post failing which all the communications and letters posted at the above address shall be deemed to have been received by the Allottee.

Clause 36 Joint Allottees

In case there are joint allottee(s), all communications shall be sent by the company to the Allottee whose name appears first and at the address given by him/her which shall for all intents and purpose be considered a properly served on all the Allottee.

Perusal said clauses of agreement for sale reveals that all the notices sent by registered post shall be deemed duly served at the address of the allottees. Also, all the communications shall be sent by the company whose address appeared first. Perusal of said demand letters



and reminders, it is clear that they were sent at the address of the complainant no.1, as postal receipts are duly attached. The postal receipts attached with reminders and demands letters duly support the argument of the respondents that they are served at address of complainant no.1 *"Mr. Kashi Nath/Mrs. Chitra Singhana Road, Gali No. 01, Mohalla Keshav Nagar, Narnaul, Mahendragarh, Haryana-123001"*

12.Further, for the final opportunity letter dated 01.08.2022, tracking report is attached by the respondents as Annexure R4 which shows that complainants have accepted the notice. Meaning thereby, respondents have duly compiled its obligations by sending communications at address of the allottee Mr. Kashi Nath,. Complainant no.1. It is mentioned in clause 35, if there is any change in address it is the duty of the complainants to inform the respondent. However, in present case complainants fails to do so. Therefore, complainants are not right in saying that they had not received any of the communications of the respondent.

13.Also, complainants have taken plea that they visited the site of the project however no progress was going on. This plea of the complainants not substantiated with any documentary proof or communications made by them to show that they had visited the site



and therefore, said plea is rejected. Even after paying an amount of ₹878400/- way back in year 2018, complainants could not place on record any documentary proof with regard to the fact as what steps complainants have taken to take the possession of the plot. Simply averring that complainants visited and met some person of the respondents is not appropriate and cannot be relied upon.

14. Now the question rises whether respondents were right in cancellation of plot and refunding the amount after forfeiture. In this regard, Authority observes that as per the reasoning mentioned in above para respondents were right on their part to cancel the booking of the plot of the complainants. In addition to reasoning, it is right to refer to clause 10 of the agreement for sale:

Clause 10 Events of Defaults and Consequences:

10.3. The Allottee shall be considered under a condition of default, on the occurrence of the following events

(i) In case the Allottee fails to make payments for two (02) consecutive demands made by the Company as per the Payment Plan annexed hereto, despite having been issued notice in that regard, the Allottee shall be liable to pay interest to the Company on the unpaid amount at the rate specified in the Rules which is State Bank of India's highest marginal cost of lending rate plus two (2) percent till the total payment in default is made.



(ii) In case the State Bank of India's marginal cost of lending rate is not in use, it would replace by such bench mark lending rates which the State Bank of India may fix from time to time for lending to the general public;

(iii) In case of default by Allottee under the condition listed above continues for a period beyond ninety (90) days after notice from the Company in this regard, the Company shall cancel the allotment of the Plot for residential usage in favour of the Allottee and refund the amount paid to it by the Allottee by forfeiting the booking amount paid for the allotment and the interest liabilities and this Agreement shall thereupon stand terminated. In such an event, the Allottee shall not be entitled to claim any right, interest or title in the said Plot.

Complainants have themselves mentioned in the rejoinder that respondents had transferred an amount of ₹683200/- in account of complainant no.1 on 11.12.2023 and deducted ₹344717/- as interest. As cancellation of the plot on 10.09.2022, as mentioned in letter dated 11.12.2023, is valid for the reasons mentioned above. Therefore, in terms of clause 10.3, respondents were right in refunding the amount after forfeiture of 10% of booking amount.

15. As complainants specifically pray for possession of plot alongwith delay interest in their pleadings and for the reasoning given above it is clear that termination of booking of plot and refund of deposited amount by the respondents are valid, therefore, other additional reliefs cannot be granted by the Authority.



16. Complainants are seeking ₹75,000/- as cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses and compensation.

17. Hence, the captioned complaint is accordingly disposed off in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]