

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

Complaint no.:
Date of decision:

31 of 2024
03.09.2025

Maninder Preet Singh
Through its POA Kuldip Singh
R/o:- 7A, Kailashpuri, Ballapur Road, Dehradun.

Complainant

Versus

1. M/s BPTP Ltd
Registered Office at: M-11, Middle Circle,
Connaught Circus, New Delhi-110001.

**Respondent
no.1**

2. M/s. Countrywide Promoters Pvt Ltd.
Registered office at: M-11, Middle Circle,
Connaught Circus, New Delhi-110001

**Respondent
no.2**

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Avninder Sujlana (Advocate)

Complainant

Harshit Batra (Advocate)

Respondents

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 29 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 there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1	Name of the project	Terra, Sector-37D, Gurugram
2	Nature of the project	Group Housing Towers
3	Area of the project	19.74 acres
4	Hrera Registered	Registered 299 of 2017 Dated:- 13.10.2017
5	DTCP Licence	Licence no.-83 of 2008 and 94 of 2011.
6	Allotment letter	07.12.2012 (as on page no. 24 of complaint)
7	Date of execution BBA	13.02.2013 (As on page no. 26 of complaint)
8	Unit no.	T22-401, Floor-4 th , Tower-T22 (As on page no. 30 of complaint)
9	Unit area	1998 sq.ft. [Super Area] (As on page no. 30 of complaint)
10	Possession clause	Clause 5 POSSESSION AND HOLDING

		<p>CHARGES</p> <p>5.1 The Seller/confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</p> <p>Clause 1 DEFINITIONS:</p> <p>1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of installments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser's within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</p> <p><i>[Emphasis supplied]</i></p>
11	Grace period	Grace period allowed
12	Date of sanction of building plan	21.09.2012
13	Due date of possession	<p>13.02.2017</p> <p>[Calculated 42 months from date of execution of BBA + 180 days]</p>
14	Total sale consideration	Rs. 1,04 89,500/-

		(As on page no. 31 of complaint)
15	Total amount paid by the complainant	Rs.99,11,321/-
16	Occupation certificate	23.01.2024 (As on page no. 245 of reply)
17	Cancellation letter	19.02.2020 03.12.2021
18	Legal notice by complainant seeking possession	16.12.2023 (As on page no. 57 of complaint)
19	Letter Undertaking (Waiver of DPC) In lieu of the respondent waiving off the delayed payment interest of an amount of Rs.6,77,723/-	29.08.2018 (As on page no. 73 of reply)

B. Facts of the complaint:

3. The complainant made the following submissions in the complaint.
 - I. That on the assurances given by the respondents as well as their agents, the complainant was influenced and booked a floor in the "Terra project" situated in sector 37D, Tower 22, being developed by the respondents.
 - II. That on the assurance of the respondents the construction of the flats would be completed within time, the complainant had booked a flat in project and paid an amount of Rs.7,00,000/- on 28.8.2012.
 - III. That subsequently the respondent vide letter dated 27.10.2012 sent a confirmation of unit selected for Allotment i.e. Unit No. T-22/401 fourth floor, Tower 22, measuring 1998 sq.ft super built-up area in

the project.

- IV. That following the confirmation of the unit, the respondent sent a Demand letter to the complainant demanding Rs.17,30,684/- and the same was paid by the complainant. Thereafter, the respondent issued the allotment letter on 07.12.2012 in favour of the complainant.
- V. That the Flat Buyer Agreement was subsequently executed on 13.02.2013 between the complainant and the respondent. As per clause 1.6 of the agreement, the respondent was liable to offer the possession of the unit within a period of 42 months from the date of signing of the agreement. Thus the promised date of delivery of the Flat was 12.08.2016.
- VI. That the respondent thereafter raised another Demand letter and accordingly the complainant paid Rs.31,82,159/- and Rs.6,60,000/-, the same was acknowledged by the respondent on 25.03.2013.
- VII. That the Total Sale Consideration of the complainant's unit vide the scheme described under Article 3 in the Flat Buyers Agreement and as affirmed by the respondents in the statement of accounts sent by them is Rs.1,51,29,102/-. The respondents again raised a Demand letter and consequently the payments of Rs.4,01,229/- and Rs.23,00,000/- were made by the complainant vide receipt nos. - 2018/1400003986 dated 24.8.2018 for Rs.23,00,000/- and Receipt no.- 2018/1400003987 dated 24.8.2018 for Rs.4,01,229/-.
- VIII. That a total amount of Rs.99,11,321/- has been paid by the complainant till date. However on visiting the project site, the attorney holder was shocked to see that even after overshooting the promised date of delivery by two good years, the construction of the

flat was way behind. Aggrieved by this, the complainant's father Sh. Kuldeep Singh wrote a letter to the respondents and delivered it by hand in person when he called upon them at their office at Connaught Place, ECE House in New Delhi. Through this letter also, he expressed his concern that though over 90% of the payments stood paid by then, they have not heard anything yet about the possession letter.

- IX. That all the respondents were interested in, was to extract payments in lieu of the flat book by the complainant whereas they had no regret about the inordinate delay in delivering possession. Though the respondents are bound both statutorily and morally to provide timely possession as well as all the documents pertaining to the Flat including the possession letter alongwith the Occupation Certificate, they did nothing to ensure any such compliance.
- X. That as per clause 6.1 (delay compensation) of the agreement dated 13.02.2013, if the seller (Respondent) fails to offer the possession of flat or handover the actual physical possession within the committed period and after expiry of grace period, thereof, it shall be liable to pay to purchase the compensation @Rs 5/- per sq. ft. per month calculated on super built up area of the unit.
- XI. That the Occupation certificate was obtained on 21.09.2023. Therefore while on one hand there has been a delay of 6 years and 7 months by the respondents in obtaining the Occupation Certificate, on the other they have not yet issued any possession letter till date to the complainant.
- XII. That the complainant paid the amounts diligently as per the payment plan opted by him but when the complaint's father visited

the spot he was shocked to see that the respondents had stalled the construction work on the site. According to clause 1.6, the respondent was supposed to deliver the possession of the said flat in 42 months but till today no possession has been offered by the respondent despite a delay of 6 years and 7 months beyond the grace period. Meanwhile an account statement received by the complainant on 31.08.2023, shows that the respondents have received a total payment of Rs.99,11,321/-.

- XIII. That the complainant received an email from his home loan provider namely HDFC Bank informing him that the respondents had cancelled his allotment and as a consequence the complainant was expected to provide the Bank with a foreclosure letter.
- XIV. That the complainant's father on receiving this email immediately rushed to meet the respondent BPTP's official Shri Abhishek Sharma on 21.11.2023 at their office in New Delhi and protested the cancellation vociferously and demanded that the possession letter of the flat be given and urged that the conveyance deed for his flat should be registered without any further delay but the respondents continued to give him one excuse after the other. After a while Mr. Abhishek assured the complaint's father of an amicable resolution and asked him to send an E-mail to respondent no.1 stating that the complainant is ready to pay all outstanding dues for taking the possession letter and requesting the restoration of the booking of the complainant. Accordingly the complainant sent an email to the respondent on 01.12.2023.
- XV. That though the said email was sent as directed, the respondents deliberately ignored the request of the complainant. The

complainant fears that the respondent has allotted his flat to someone else at a higher price than what was agreed with the complainant.

- XVI. That the account statement provided by the Respondents shows that as on 31.08.2023, the complainant has paid Rs. 99,11,321/- which is more than 90% of the total consideration of the unit/flat whereas the project is delayed by 6 years and 7 months. No possession letter or occupation certificate issued by the authorities had been provided to the complainant until 11.12.2023. The respondents are enjoying the hard earned money collected from the complainant by putting it for their own use at the cost and peril of the complainant.
- XVII. The Authority may note that the respondents have now raised the cost of the project double to the original amount, therefore they in order to earn hefty profit and satiate their greed, are deliberately and intentionally bent upon harassing the complainant and terminating his allotment.
- XVIII. That on 10.12.2023, the complainant again sent an email to respondents enquiring what is required to be done to get possession of the unit . In this email, the complainant reiterated his interest to take possession of the flat. Also he enquired in this email, the status of the occupation certificate of the project and requested that if the same is available, the same may be sent to him for his perusal and records.
- XIX. That finally on 11.12.2023, the complainant received the copy of the Occupation Certificate through email wherein it was stated that the respondent has noted the complainant's request for taking

possession of his apartment and that they shall have an internal reconciliation done in order to obtain the data on any unpaid dues/ documents pending at the complainant's end and further that the same would be shared in about 2-3 days.

- XX. The complainant was constrained to send a Legal Notice on 16.12.2023. On 22.01.2024, the complainant's representative once again visited the project site at Gurugram and was shocked to see that though the Occupation Certificate has now been issued, the unit and the approach premises in the project uninhabitable.
- XXI. That further the respondent on 22.01.2024, sent an intimation letter announcing revised building plans of Phase-2 (Towers-26 & 27) which further proves that the project is still incomplete and uninhabitable.

C. Relief sought by the complainant:

4. The complainant has filed the present compliant for seeking following reliefs:
- i. Direct the respondent to revoke the cancellation of allotment of the unit and thus revive the allotment in favour of the complainant.
 - ii. Direct the respondent to provide a copy of the final statement of accounts pertaining to the respondent adjusting the delay penalty for the delay of 6 years and 7 months calculated upto the date of the Occupation Certificate.
 - iii. Direct the respondent to handover the possession of the unit to the complainant/allottee as and when it becomes due as per the terms of the Agreement dated 13.02.2023
 - iv. Direct the respondent to get Conveyance Deed registered in the

name of complaint with regard to unit or in the alternate

- v. Direct the respondent in the alternate i.e. if they are unable to deliver the same unit as booked by the complainant, to refund the amount paid by the complainant along with interest as prescribed under section 15 of the Haryana RERA Rules, 2017 till the date of filing the complaint.

5. On the date of hearing, the Authority explained to the respondents /promoters about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply filed by respondents:

6. The respondent no.1 has submitted that the respondent no.2 i.e., M/s. Countrywide Promoters and Developers Pvt. Ltd. is not effective. Vide order bearing no. CP(CAA) 26/Chd/Hry/2023 dated 20.09.2024 passed by the Hon'ble NCLT, Chandigarh, the respondent no.2 company has transferred its assets to the Transferee company. The respondent no.2 is not a separate legal entity as on date and no legal action can be proceeded against respondent no. 2, hence, the name of the respondent no.2 should be deleted from the array of parties.
7. The respondent no.1 has contested the present complaint on the following grounds:
 - I. That the complainant had approached the Authority almost after 3 years of termination of the unit in order to gain undue advantage of the due process of law and hence is liable to be dismissed on this ground alone.
 - II. Moreover, it is imperative to note at this stage that the present complaint has been filed by Mr. Kuldeep Singh stating to be the

power of attorney holder of the complainant whereas no proof has been annexed with this regard. Hence, the complaint is liable to be dismissed.

- III. That the complainant booked a unit in the project of the respondents via an Application Form dated 23.08.2012 and paying booking amount of Rs.7,00,000/- Thereafter an unit bearing number T22-401, 4th Floor in Tower 22, tentatively admeasuring 1998 sq. ft. was allotted to the complainant vide Allotment Letter dated 07.12.2012 and thereafter, the Builder Buyer Agreement dated 13.02.2013 was also executed between the parties.
- IV. That as per the Allotment Letter and BBA, the complainant consciously and wilfully opted for construction linked payment plan for remittance of the sale consideration for the unit in question and therefore, the complainant was under an obligation to remit all the outstanding dues as per the said payment plan opted by the complainant.
- V. That it is imperative to note that during the execution of the Agreement, it was categorically noted by the complainant that remittance of outstanding dues is the essence of the Agreement and in case of delay in remittance of outstanding dues, the respondents has the right to terminate the unit of the complainant.
- VI. That it is imperative to note that due to delay in remittance of the outstanding dues and issuance of the above-noted demand and reminder letters, the complainant approached the respondents stating that he is unable to make payments of the outstanding dues and requested the respondents for waiver of the delayed payment charges levied by the respondents.

- VII. That the *bonafide* conduct of the respondents is noted herein as on the request of the complainant, the respondents waived off the delayed payment interest of the complainant amounting to Rs.6,77,723/- and in lieu of the same, the complainant undertook to waive off the claim of delayed possession charge against the respondents and executed an Undertaking dated 29.08.2018 in this regard.
- VIII. That almost after 5 years of waiving of his claim of delayed possession charges, the complainant, at this stage cannot approach the Authority seeking the relief of delayed possession charges which was voluntarily waived off by the complainant. That it is submitted that the present complaint is barred by the doctrine of Waiver.
- IX. That after the execution of the Undertaking dated 29.08.2018, all the rights and obligations of the complainant with respect to the delay possession charges has been waived off and thereby settled between the parties and all the obligation between the parties has come to end. However, in order to generate unwarranted litigation against the respondents, the complainant has filed the present complaint before the Authority.
- X. That as per the terms and conditions of the Undertaking dated 29.08.2018, a full and final settlement have been arrived between the parties hence, no cause of action exists.
- XI. That, as per the Undertaking dated 29.08.2018, the complainant had categorically agreed to the fact that he had willingly relinquished and foregone all cause of action with respect to the delay possession charges and he shall not claim the same before any court of law,

whatsoever and hence, the complainant cannot approach the Authority for the same.

XII. Hence, in light of the *bonafide* conduct of the respondent and no cause of action subsisting between the parties after execution of the Undertaking dated 29.08.2018, the complainant cannot approach the Authority again seeking the relief intentionally waived off and settled between the parties.

8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

9. 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

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

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

Section 11(4)(a)

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

10. 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.
11. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357*** and reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section

72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent

F.1 Objection regarding delay due to force majeure circumstances

15. The respondent no. 1 have raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Punjab and Haryana High court, Hon'ble NGT, shortage of labour, demonetisation, outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondents, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. In the present case, the complainant was allotted a flat bearing no. T-22/401 on 4th floor in Tower-22 admeasuring 1998 sq.ft vide allotment letter dated 07.12.2012. Thereafter, the Flat Buyer's Agreement was executed between the parties on 13.02.2013. As per clause 1.6 of the Agreement dated 13.02.2013, the due date for offer of possession of the unit was 42 months from the date of sanction of the building plans or execution of the buyer's agreement, whichever is later. Further, as per clause 5.1 of the Agreement dated 13.02.2013, an additional grace period of 180 days was provided to the respondent after the expiry of the said

Commitment Period. The period of forty two months is calculated from the date of execution of the agreement. The Buyer Agreement has been executed between the parties on 13.02.2013, the period of 42 months from 13.02.2013 comes out to be 13.06.2015. Further, an unqualified grace period of 180 days has been agreed between the complainant and the respondents to be granted to the respondents over and above the said 42 months. The same is granted to the respondents, being unqualified. Thus, the due date of possession comes out to be 13.02.2017. The respondent is seeking the benefit of Covid-19, which came into effect much after the due date of offer of possession. Therefore, no further relief in respect to the same can be granted to the respondents. The respondents have submitted that due to various orders of the Authorities and court, the construction activities came to standstill. The Authority observes that though there have been various orders issued to curb the environment pollution, water shortage, labour shortage etc, but these were for a short period of time and are the events happening every year. The respondent was very much aware of these event and thus, the promoter/ respondent cannot be given any more leniency based on the aforesaid reasons.

G. Findings on the reliefs sought by the complainant:

- G.I. Direct the respondent to revoke the cancellation of allotment of the unit and thus revive the allotment in favour of the complainant.**
- G.II Direct the respondent to provide a copy of the final statement of accounts pertaining to the respondent adjusting the delay penalty for the delay of 6 years and 7 months calculated upto the date of the Occupation Certificate.**
- G.III Direct the respondent to handover the possession of the unit to the complainant/allottee as and when it becomes due as per the**

terms of the Agreement dated 13.02.2023

G.IV Direct the respondent to get Conveyance Deed registered in the name of complainant with regard to unit or in the alternate

G.V Direct the respondent in the alternate i.e. if they are unable to deliver the same unit as booked by the complainant, to refund the amount paid by the complainant along with interest as prescribed under section 15 of the Haryana RERA Rules, 2017 till the date of filing the complaint.

16. In the present complaint, the complainant is seeking revocation of the cancellation of the allotment of the complainant's unit and revival of allotment in favour of the complainant and in case, the respondent is unable to deliver the same unit as booked by the complainant then to refund the amount paid by the complainant along with prescribed rate of interest.
17. In the present complaint, the complainant booked a unit bearing no. T-22/401 on Fourth floor in Tower-22 admeasuring 1998 sq.ft. super built up area in the project namely, "Terra" situated in Sector-37, Gurugram. The allotment letter was issued in favour of the complainant on 07.12.2012 and thereafter, the Flat Buyer Agreement was executed between the parties on 13.02.2013. As per clause 1.6 read with clause 5.1 of the Agreement dated 13.02.2013, the due date of possession of the unit was within a period of 42 months from the date of sanction of building plans or execution of the agreement, whichever is later. The Building plans for the said project were sanctioned on 21.09.2012 and the Builder Buyer Agreement was executed between the parties on 13.02.2013. The date of execution of the Builder Buyer's Agreement falls later and thus, the period of 42 months is calculated from the date of execution of the agreement. Also, as per clause 5.1 of the agreement dated 13.02.2013, the an additional

grace period of 180 days was agreed between the parties to be granted in favour of the respondents over and above the said commitment period. Thus, the due date of possession comes out to be 13.02.2017. The total sale consideration of the unit was agreed to be Rs.1,04,89,500/- and the complainant has paid an amount of Rs.99,11,321/- till date to the respondent. As per the payment plan forming part of the Allotment Letter and later the agreement for sale as well, Rs.6/7 lacs was payable at the time of booking; 20% of BSP was to be paid "Within 45 days of booking", 35% of BSP was to be paid "On the start of construction", 20% of BSP was to be paid "On 9th Floor slab or 12 months whichever is later", 20% on "24 months or top floor slab whichever is later", 5% of BSP on "Offer of Possession".

18. The complainant applied for loan with the Housing Development Finance Corporation Limited (HDFC) and the loan to the tune of Rs.85,00,000/- was accordingly sanctioned in favour of the complainant. Thereafter, a TPA was executed between the complainant, respondent and HDFC on 22.03.2013. As per Clause 5 of the Agreement dated 13.02.2013 read with clause 1.6, the due date of possession was 13.02.2017.
19. The respondent has submitted that the complainant was in default for not making payments, not taking possession, for non-execution of sale deed and non-payment of statutory dues. Accordingly, the respondent had a right to terminate the unit, after giving multiple opportunities through various reminder notices and final demand letter for payment of outstanding dues. The respondent was constrained to terminate the

allotment of the unit of the complainant by issuing the Termination letter dated 19.02.2020 and 03.12.2021.

20. Upon a careful examination of the documents on record and after considering the submissions of the parties, the Authority notes that the respondent obtained the Occupation Certificate on **23.01.2024**. As per the terms of the Agreement for Sale, the due date for handing over possession was **13.02.2017**, which is calculated as 42 months from the date of execution of the Agreement, along with a grace period of 180 days. The respondent raised a demand on **27.08.2018**, citing the construction milestone of "24 months or top floor slab, whichever is later." The same demand was reiterated and sent to the complainant again on **28.08.2018**. Subsequently, a "Final Demand Notice for Payment of Outstanding Dues" was issued by the respondent on **10.12.2019**, providing the complainant with 15 days to comply. Thereafter, the respondent, vide letter dated **19.02.2020**, cancelled the complainant's unit. Another cancellation letter was issued on **03.12.2021**, thereby reaffirming the cancellation of the unit.

21. It is noted that, at the time of cancellation, the complainant had already paid a sum of Rs. 99,11,321/- against the total sale consideration of Rs. 1,04,89,500/-, amounting to more than 90% of the total consideration. Importantly, the demand raised by the respondent in August 2018, which formed the basis for subsequent cancellation, was made after the agreed due date for possession had already lapsed. Therefore, as of 2018, the unit was incomplete, and the respondent was in breach of its

obligation to offer timely possession in accordance with the terms of the Agreement.

22. Additionally, the record contains various email correspondences (from pages 51–53 of the complaint) which indicate that, even after the cancellation, both parties continued to engage in discussions concerning the possible reinstatement of the unit.
23. The Authority observes that the respondent was in default of its contractual obligation by failing to deliver possession of the unit to the complainant within the stipulated timelines. It is further noted that the respondent raised a demand for final payment in the year 2020, whereas the Occupation Certificate was obtained only on 24.01.2024. This sequence of events clearly indicates that the said demand was not raised at a genuine or legally sustainable stage and appears to have been issued without the requisite completion of the project, thereby rendering the demand premature and unjustified. The respondent has not furnished any credible explanation for the considerable delay in completing the construction and offering possession of the unit to the complainant. Notwithstanding this delay, and despite the complainant having already paid more than 90% of the total sale consideration, the respondent proceeded to cancel the allotment of the unit.
24. Even after the cancellation, the respondent has failed to refund the amount paid by the complainant. It is also placed on record that the complainant continues to pay EMIs towards the home loan availed from **HDFC Bank**, as evidenced by the account statements submitted.

In the considered opinion of the Authority, the respondent was under a legal obligation to refund the amount advanced by the Bank and settle the outstanding loan liability upon cancellation of the unit. The respondent's failure to do so is without justification and contrary to the principles of fairness and equity. Accordingly, the cancellation of the unit, effected through letters dated **19.02.2020** and **03.12.2021**, is hereby **set aside**. The respondent is directed to **reinstate the allotment of the unit** to the complainant within a period of **30 days** from the date of this order.

25. In the event that third-party rights have been created in respect of the originally allotted unit, the respondent shall offer the complainant an alternative unit of similar size and location within the same project, at the same sale consideration.
26. The respondent is directed to provide an updated Statement of Accounts to the complainants within a period of 10 days of this order, after adjusting the delayed possession charges. The respondent is directed to handover possession of the unit to the complainant within a period of 30 days and thereafter, execute Conveyance Deed in favour of the complainant within period of 90 days from the date of order.

G. Directions of the Authority:

27. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act.

- i. The cancellation dated 19.02.2020 and 03.12.2021 is hereby set aside. Consequently, the respondent is directed to reinstate the unit allotted to the complainant within a period of 30 days from this order. In case, third party rights have been created on the unit, the respondent is directed to provide another similarly located unit to the complainant in the same project on the same sale consideration.
- ii. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a for every month of delay from due date of possession i.e., 13.02.2017 till the date of grant of Occupation Certificate plus 2 months i.e., 23.03.2024 at the prescribed rate of interest i.e., 10.85% p.a. as per proviso to Section 18 (1) of the Act, 2016 read with rule 15 of the Rules.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(zb) of the Act.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to provide an updated Statement of Accounts to the complainants within a period of 10 days of this order, after adjusting the delayed possession charges.
- vi. The respondent is directed to handover possession of the unit to the complainant within a period of 30 days and thereafter,

execute Conveyance Deed in favour of the complainant within period of 90 days from the date of order.

- vii. The respondent shall not charge anything from the complainants which is not the part of the agreement.
- viii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to the registry.

Dated: 03.09.2025



(Ashok Sangwan)

Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA