

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

Complaint no.: 3615 of 2024
Date of complaint: 12.08.2024
Order pronounced on: 11.12.2025

Tarlochan Singh Badyal

R/o: Ashirwad Farm House, Mandi Road, Gadaipur, South
Delhi, Delhi – 110030.

Also at: B-81, Second Floor, Greater Kailash, Part-1, New
Delhi – 110048.

Complainant

Versus

1. M/s Native Buildcon Private Limited
2. M/s Countrywide Promoters Private Limited

[Both now known as **M/s BPTP Limited**, vide order dated 20.09.2024 passed by Hon'ble NCLT, Chandigarh Bench (Court-II), in CP (CAA) 26/Chd/Hry/2023 (2nd Motion) under Section 230 & 232 of the Companies Act, 2013 read with Section 66 and 52 the Companies Act, 2013 and the Companies (Compromise, Arrangements and Amalgamation) Rules, 2016.]

Respondents

Having registered office at: M-11, Middle Circle,
Cannaught Circus, New Delhi-110001.

CORAM:

Shri Arun Kumar

Chairman

Shri Phool Singh Saini

Member

APPEARANCE:

Shri Gaurav Rawat, Advocate

Complainant

Shri 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 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 provisions of the Act or the Rules and regulations made thereunder or to the allottees 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 complainants, 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 and location of the project	"Visionaire Villa" at Sector-70A, Gurugram, Haryana
2.	Project area	102.2 acres
3.	Nature of Project	Residential Semi-Finished Villas
4.	DTCP license no. and validity status	15 of 2011 dated 07.03.2011 Valid up to 06.03.2024
5.	Name of Licensee	M/s Countrywide Promoters Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered <i>[under project "Astaire Gardens", as these Villas as the part of the same license falls under license no.15 of 2011, as also mentioned in the booking form on page 12]</i>
7.	Unit No.	B-162 (earliest unit) (As per page no.36 of complaint) B-195 (New unit) (As per page no.81 of complaint)
8.	Unit area admeasuring	290 sq. yds. (As per page no.81 of complaint)
9.	Allotment letter	19.07.2013 for B-162 (earliest unit) (As per page no.36 of complaint)

		17.09.2014 for B-195 (New unit) (As per page no.81 of complaint)
10.	Date of buyer agreement	05.12.2013 (As per page no.40 of complaint)
11.	Possession clause	<p>5. Possession and holding charges <i>5.1 the seller/confirming party proposes to offer the 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 to the purchaser(s).</i></p> <p>read with</p> <p><i>1.5 "Commitment period" The seller/confirming party shall offer the possession of the semi-finished residential villa/ unit to the purchaser(s) within a period of 36 months from the date of execution of villa buyer's agreement.</i></p> <p>[Emphasis supplied] (page 82 & 76 of reply)</p>
12.	Due date of possession	05.12.2016 (As per the possession clause read with commitment charges, the due date of possession is calculated 36 months from the date of execution of buyer's agreement dated 05.12.2013.)
13.	Total Sale Consideration	Rs.3,95,57,235/- (as per allotment letter dated 17.09.2014 at page 81 of complaint)
14.	Amount paid by complainant	Rs.3,42,51,177/- (i.e., 86.58%) up to 08.07.2019 (As per SOA annexed with Offer of possession at page 132 of complaint)
15.	Tripartite Agreement	06.12.2013 for B-162 (earliest unit) (As per page no.74 of complaint) 15.06.2018 for B-195 (New unit) (As per page no.85 of complaint)
16.	Occupation certificate/ Completion certificate	02.07.2020

		(As per page no.22 of the written submission filed by the respondent)
17.	Payment request/ demand letter	26.09.2018, 12.06.2019, 10.01.2020, 07.03.2020 (as per page 6-14 & 15-21 of the reply to the application)
18.	Offer of possession	07.03.2020 (As per page no.130 of complaint)
19.	Final demand letter	16.04.2020 (as per page 32 of the reply to the application)
20.	Cancellation letter	28.05.2020 (as mentioned in prayer vi at page 5 of complaint also at page 35 of the reply to the application)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - a. In 2013, the respondent company issued an advertisement announcing the residential project called "Visionnaire", situated at Sector 70A, Gurugram, Haryana in a land parcel admeasuring a total area of approximately on the acres of land, under the license no. 15 of 2011 dated 07.03.2011, issued by DTCP, Haryana, Chandigarh. and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the projects had got building plan approval from the Authority.
 - b. That relying on representations and assurances given by the respondent, the complainant booked a plot in the project by paying an amount Rs.20,00,000/- towards the booking of the said unit, in Sector 70A and the same was acknowledged by the respondent.
 - c. That the respondent confirms the booking of the said unit to the complainant. Further, providing the details of the project, confirming the booking of the unit dated 17.06.2013, allotting a unit no. B-162 in the

aforesaid project of the developer for a total sale consideration of the unit i.e., Rs.38,356,710/-which includes basic price, car parking charges and development charges and other specifications of the allotted unit and providing the time frame within which the next instalments was to be paid.

- d. That a buyer's agreement was executed between the complainant and respondent on 05.12.2013.
- e. That the complainant had booked the unit under the subvention scheme arranged by the respondent with the HDFC Limited. A tripartite agreement was signed between the three stating that all the pre-Emi's will be paid by the respondent no.1 from date of agreement till 30.11.2015 till they offer the possession. That respondent builder failed to pay the pre-EMI's on time and every time burdens of paying the pre-EMI's shifted upon the complainant.
- f. That respondent in the month of 17.09.2014 approach the complainant and provided various representations and assurances regarding change of the unit from B-162 to B-195. Respondents confirmed that the unit had got plan approval from the authority. Furthermore, provide the assurance that the total amount paid by the allottees will be adjusted and no extra amount is required to be paid and the terms and conditions will remain the same as agreed. Thereafter, an addendum to plot buyer agreement was executed with the complainant dated 06.12.2013, and 15.06.2018.
- g. As per clause 5 of the buyer's agreement the Respondent had to deliver the possession within a commitment period the date of the execution of the agreement. Hence the due date of possession comes out to be 05.12.2016.
- h. That a new tripartite agreement was signed along with an addendum agreement on 15.06.2018 with respect to the fresh allotment letter that was issued to the complainant by the respondent no.1 on 17.09.2014. The total sale consideration of the new unit i.e. B-195 was Rs. 3,95,57,235/-.

- i. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.3,59,80,780/- towards the said unit against total sale consideration of Rs.3,95,57,235/-.
- j. That after the repeated request and reminders from the complainant the respondent no.1 sent a mail to the complainant stating that the unit is ready and they have posted the offer of possession to the complainant, but 4 days after, from 22.03.2020, Lockdown was announced due to the spread of Coronavirus and no post was hence received to the complainant.
- k. That respondent issued possession letter dated 07.03.2020 in favour of the complainant. That along with the above said demand letter respondent raised several illegal demands on various account which are actually not payable as per the buyer's agreement. Copy of the same has not been provided till date despite repeated requests. Furthermore, respondent has asked for the GST, but the due date of handing over of the possession is much prior to the date of enforcement of the GST. Hence, the respondent cannot charge the same.
- l. That raising demand letter by the respondent on payment of charges which the plot buyer is not contractually bound to pay, cannot be considered to be a valid demand letter/offer of possession. It is pertinent to mention here that at the time of offer of possession respondent failed to provide the copy of OC of the said unit. In the present case asking for charges as elaborated above, which the allottees are not contractually bound to pay is illegal and unjustified and therefore not a valid offer of possession/demand letter.
- m. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. The allottee raised objection to above said pre-requisite condition of the respondent as

no delay possession charges was paid to the complainants but respondent instead of paying the delay possession charges clearly refuse to handover to possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same. The fact is that the complainants has never delayed in making any payment and has always made the payment rather much before the construction linked plan attached to the BBA.

- n. The allottee has approached the company with a request for payment of compensation, despite not making payments on time and on the assurance that he shall make the payment of the delay payment charges as mentioned above along with all other dues to the company.
- o. The purpose of quoting this example is that not only the BBA is one sided heavily loaded in favour of the Respondent but even the Settlement-cum-Amendment Agreement is also heavily loaded in favour of the Respondent. Needless to mention that such one-sided Agreements have been held to be unconstitutional and hence invalid by the Honourable Supreme Court and the Honourable High Courts in number of cases. The settlement cum amendment agreement therefore is illegal as explained above.
- p. That the respondent asking for electric meter and electrification charges from the complainant is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/- hence asking for such a huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately. So are the other demands required to be withdrawn, as per details provided above and those which are not a part of the BBA.
- q. During the period the complainant was affected from Covid-19, being a senior-citizen, it took him more than a year to recover from it and when finally, the complainant recovered, he was affected by a brain dysfunction

disease. It is pertinent to mention here that the complainant was 64 yrs. of age at this time and was being treated by a neurosurgeon, he was too unwell to give any instructions.

- r. The complainant after a few months when he was finally recovered contacted the respondents on several occasions and were regularly in touch with the Respondent regarding the possession of the unit, to which the respondent always gave one or the other reason. Despite the above-mentioned facts complainant kept on paying the EMI's regularly against the loan amount dispersed to the respondent no.1 against the unit and is paying it till date.
- s. The complainant kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why delivery is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc.
- t. That complainant sent his representative to the respondent's office to ascertain the actual position of the aforesaid property, and he was shocked to know about some purported intention/cancellation
- u. That one day on 16.08.2023, the complainant was in utter shock and dismay when he got a mail from the HDFC bank stating that his unit has been cancelled by the respondent no.1 and bank will be issuing a foreclosure letter.
- v. That since then until now the complainant had been in touch with the respondent and paying his EMI's, meeting the respondents but no solution has been reached. Not only this but the complainant had also paid PRE EMI'S on behalf of the respondent no.1 to the bank during the lockdown times.

- w. That complainant without wasting any time, wrote a letter to the bank stating that no cancellation/termination has been sent to the complainant till that date, the complainant had fulfilled all his obligations as per the agreement by making the timely payments even in times of covid-19. The complainant also requested the respondent to resolve the issue, with the assurance that the undersigned would continue to pay the EMI's timely.
- x. The respondent not only failed to adhere to the terms and conditions of booking but also illegally extracted money from the complainant by making false promises and statements at the time of booking. The respondent is unable to handover a possession even after a delay of many years.
- y. The complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said Unit. They have not only been deprived of the timely possession of the said Unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the BBA.
- z. That complainants requested to the respondents raising the concern with respect to prior inspection/ visit of the unit, asking the respondents to pay the dues arising on the part of the respondents, further to provide the copy of the OC, asking for the details of the TDS plus the details of the taxes paid by complainant, and the draft copy of the conveyance deed but respondents till date failed to reply to aforesaid concerns.
- aa. That the complainant being an aggrieved person filing the present complaint under Section 31 with the Authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph. That as per section 18 of the RERA Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or

project for a delay or failure in handing over of such possession as per the terms and agreement of the sale. That the complainants hereby make a submission before the Authority under section 34 (f) to ensure compliance/obligations cast upon the promoter.

bb. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this Hon'ble Authority.

cc. That the present complaint is within the prescribed period of limitation. That the complainant has not filed any other complaint before any other forum against the erring respondents and no other case is pending in any other court of law. Hence the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

- i. Directing the respondent to execute the sale deed and hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
- ii. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA, from the due date of possession till date of execution of sale deed and actual physical possession thereof being denied to the complainant by the Respondent in spite of the fact that the complainant desires to take the possession.
- iii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before execution of the Conveyance Deed/ sale deed.
- iv. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to refund the GST amount calculated from the

complainant as the due date of handing over of the possession comes before the date of enforcement of the GST. Hence, complainant not liable to pay the GST.

- v. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters.
- vi. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to set a side cancellation letter dated 28.05.2020.
- vii. It is most respectfully prayed that this Hon'ble Authority be pleased to restrain the respondent from creating third party right
- viii. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent, not to cancel the allotment of the unit.
- ix. It is most respectfully prayed that this Hon'ble Authority be pleased to quash the illegal offer of possession cum demand letter dated 07.03.2020.
- x. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.
- xi. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondent to execute the sale deed and handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
- xii. It is most respectfully prayed that this Hon'ble Authority be pleased to order the respondents not to charge anything irrelevant which has not been agreed to between the parties like Labour Cess, electrification Charges, maintenance charges etc, which in any case is not payable by the Complainant.
- xiii. It is most respectfully prayed that this Hon'ble Authority be pleased to direct the respondent to provide the exact lay out plan of the said unit. And execute the conveyance deed and deliver the actual physical possession.
- xiv. Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

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.

D. Reply by the respondent.

6. The respondent has contested the complaint by filing reply on the following grounds: -
 - a. That at the very outset, it is submitted that vide order dated 20.09.2024 of the National Company Law Tribunal, Chandigarh in CP(CAA)26/Chd/Hry/2023, the respondents companies M/s Native Buildcon Pvt. Ltd. and M/s Countrywide Promoters Pvt. Ltd., have been wounded up and merged along with the other sister concern companies and hence the respondents are no more a legal entity.
 - b. That the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the villa buyer's agreement dated 05.12.2013, as shall be evident from the submissions made in the following paras of the present reply. The respondent craves leave of this Authority to refer and rely upon the terms and conditions set out in the buyer's agreement in detail at the time of hearing of the present complaint, so as to bring out mutual obligations and responsibilities of the respondent as well as the complainant.
 - c. That the complainant is in default of their obligations under the agreement and as such has disentitled himself from claiming any relief under the said agreement.
 - d. That the complainant being interested in the real estate development of the respondent, known under the name and style "Visionnaire" at Sector 70A, District Gurgaon, Haryana approached respondent to purchase the

unit and upon their application for allotment of the unit was allotted a villa bearing no. B-162 tentatively admeasuring super area of 5,328 sq. ft. ("Old Unit").

- e. That the project of the respondent is registered under the project Astaire Gardens, as these villas are the part of the same license falls under License no. 15 of 2011 as also mentioned in the booking form on page 12.
- f. Thereafter, a villa buyer's agreement was executed between the parties on 05.12.2013. That being a contractual relationship, reciprocal promises are bound to be maintained. 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.
- g. That the agreement categorically mentions that the unit of the complainant and its area was tentative and is subject to change during the completion of the construction of the said project. That the complainant had also executed and undertaking and affidavit in this regard.
- h. That in light of the said clauses, categorically agreed between respondent and the complainant, that the unit allocated to the complainant was tentative and subject to change. It is categorically submitted that the unit of the complainant was changed from B-162 to B-195 after mutual discussions between the parties. The complainant had himself confirmed the new unit thereafter the unit of the complainant was changed to B-195 vide allotment letter dated 17.09.2014. Thereafter, the parties entered into an addendum to the buyer's agreement dated 15.06.2018.
- i. That the complainant availed a home loan against the unit for which the permissions to mortgage was issued by respondent and thereafter the parties entered into a tripartite agreement dated 06.12.2013. That as per clause 3 of the TPA, the respondent was only obligated to make payment

of the pre-EMI's to the bank from the date of first disbursement till 30.11.2015 and the respondent in their bonafide has made payment of the Pre-EMI's till Nov. 2016.

- j. That the remittance of all amounts due and payable by the complainant under the agreement as per the schedule of payment incorporated in the agreement was of the essence under Clause 7 of the BBA.
- k. The complainant had defaulted/delayed in making the due payments, upon which, reminders and notices were also served to the complainant. That the bonafide of the respondent is also essential to be highlighted at this instance, who had served a number of request letters and reminders to the complainant to ensure that the payments are made in a timely fashion.
- l. That the complainant is a habitual defaulter who has been in default of payments since the very beginning as is evident from the table above. The complainant had made last payment on 08.07.2019 and thereafter stopped making payment of the instalments. That the complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent.
- m. That a similar obligation to make the payment against the unit and the payment of interest in case of non-payment is also as per the Real Estate (Regulation and Development) Act, 2016, under Sections 19(6) and 19(7).
- n. The above-mentioned provisions note the mandatory obligation of the complainant to make the due payments against the Unit, which under no circumstance whatsoever, can be escaped. As is widely known and understood that the continuous flow of funds is pertinent to the real estate industry, that upon the failure of the complainant in making due payments as per the schedule agreed upon, it has a cascading effect on the operations and the cost for the proper execution of the project increases

exponentially and further causes enormous business losses to the respondent. That upon delay being caused by the complainant on payment of different instalments, they were served with various payment reminders as noted in the table.

- o. That by not making the due payments, not only have the complainant violated the agreement but also the Real Estate (Regulation and Development) Act, 2016, under which, the complainant was obligated to make payment and despite repeated reminders and various opportunities, miserably failed to do. Accordingly, the complainant stood in fundamental breach of the agreement and the Act.
- p. That without prejudice to the contentions of the respondent, that the respondent has ensured its utmost bonafide and lawful conduct since the very beginning. There is no delay in the development of project, which was duly, timely, efficiently, and effectively completed as per the agreed timelines. As per clause 5.1 r/w 1.5 and 1.15 of the agreement, the respondent proposed to offer the possession of the unit within a period of 36 months from the date of execution of the villa buyer's agreement plus a grace period of 180 days subject to the allottees having complied with all the terms and conditions of the agreement and force majeure circumstances. That the grace period of 180 days cannot be excluded and is liable to be included in terms of the judgment of the Hon'ble Appellate Tribunal in Emaar MGF Land Ltd. Vs Laddi Paramjit Singh, bearing Appeal No. 122 of 2022, decided on 16.03.2023.
- q. Furthermore, the delivery of possession was also subject to the force majeure circumstances as under clause 10 and 1.14 of the agreement.
- r. At this stage, it is categorical to note that the respondent faced with certain force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court

and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, the respondents 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.

- s. 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.
- t. That from the facts indicated above and documents appended, it is comprehensively established that a period of 314 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the respondent has been prevented by circumstances beyond their power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 36 months along with grace period of 180 days has been provided in the Agreement.
- u. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the Respondent. It must also be noted that the respondent had the right to suspend the construction of

the project upon happening of circumstances beyond the control of the complainant as per clause 10(ii), however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.

- v. That despite there being a number of defaulters in the project, the respondents had to infuse funds into the project and have diligently developed the project in question. That even after the defaults of the complainant the respondent completed the construction of the unit and offered the possession of the unit to the complainant on 07.03.2020 and earnestly requested the complainant to take possession of the unit after remittance of the balance sales consideration of the unit.
- w. That the complainant had from the very beginning failed to make timely payment of the instalments as evident from the table above. The complainant made the last payment on 08.07.2019 i.e. even before the offer of possession and thereafter multiple reminders were issued to the complainant to make payment of the balance sales consideration the complainant has miserably failed to do so. It is submitted that out of the total sales consideration of Rs.4,39,55,939.82/- (without the stamp duty charges), the complainant has only made a payment of Rs.3,42,51,177/-.
- x. That due to the defaults in making the payment of the balance sales consideration, the complainant was served with a final demand notice for payment of the outstanding demand on 10.01.2020 wherein the complainant was given within 15 days from the date of the notice to pay the outstanding dues. Thereafter offer of possession was made to the complainant on 07.03.2020 and last and final demand notice for payment of outstanding amount was issued to the complainant on 16.04.2020. That the complainant was duly communicated that the failure to abide by the said letter and remittance of the balance sale consideration of the unit

within 15 days from the date of receiving the notice, the respondent shall have the right to cancel the allotment of the complainant and forfeit the amount as per the terms and condition of the agreement. However, the complainant failed to abide by the last and final letters sent to him hence, the respondent was constrained to cancel the allotment of the complainant vide termination/cancellation letter dated 28.05.2020.

- y. That it is of essence to note that upon the non-payment by the complainant, the complainant was considered under default under clause 7.4 of the agreement, and upon the failure of the complainant to pay due amounts/instalments the respondent had the complete right to terminate the allotment of the complainant under clause 7.1 of the agreement.
- z. That the unit of the complainant was terminated due to the defaults of the complainant hence, the complaint is liable to be dismissed.

7. All other averments made in the complaint were denied in toto.

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 those undisputed documents and oral as well as written submissions made by the parties.

E. Written submission made by both the parties.

9. The respondent has filed written submissions on 13.11.2025 and the same are taken on record. The copy of occupation certificate dated 02.07.2020 has been placed on record by way of written submission by the respondent. And no additional facts apart from the complaint and reply have been stated in the written submissions.

F. 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.

F.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 for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject matter jurisdiction

12. 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) The promoter shall-

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

Section 34-Functions of the Authority:

34(j) 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 complainant at a later stage.

G. Findings on the objections raised by the respondent.

G.I Objection regarding delay in project due to force majeure circumstances.

14. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as orders/ restrictions of the NGT in NCR as well as competent authorities account of

the environmental conditions, ban on construction by the order of courts and adverse effects of Covid-19 etc. and others force majeure circumstances but all the pleas advanced in this regard are devoid of merit. Firstly, the events such as orders of NGT in NCR on account of the environmental conditions, ban on construction activity and others force majeure circumstances does not have any impact on the project being developed by the respondent. As the events mentioned above are for short period which does not make such a huge impact on project which can cause and justify inordinate delay of 4 years. Moreover, these events are of routine in nature happening annually and the promoter is required to take the same into consideration while fixing the due date of possession. Secondly, the Authority has gone through the possession clause of villa buyer's agreement and as per clause 5.1 read with 1.5 of buyer's agreement, the respondent has proposed to offer the possession within 36 months from the date of execution of villa buyer's agreement, therefore, the due date to handover the possession of the unit is comes to be 05.12.2016, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The Authority put reliance judgment of *Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020 dated 29.05.2020* which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

15. Thus, the respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of its own wrongs.

H. Findings on the relief sought by the complainant.

- H.I Direct the respondent to set a side cancellation letter dated 28.05.2020;**
- H.II To restrain the respondent from creating third party right;**
- H.III Direct the respondent, not to cancel the allotment of the unit;**
- H.IV To quash the illegal offer of possession cum demand letter dated 07.03.2020;**
- H.V Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA, from the due date of possession till date of execution of sale deed and actual physical possession;**
- H.VI Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the RERA, 2016, before execution of the conveyance deed.**

- 16. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
- 17. In the present complaint, the complainant intends to continue with the project and are seeking setting aside of cancellation letter dated 28.05.2020 and to restore the originally allotted unit.
- 18. In the present case, the complainant had applied for booking a semi-finished villa under subvention plan in project "Visionnaire" at Sector-70A, Gurugram, being developed by the respondent on 14.06.2013 and he was allotted a semi-finished residential villa bearing no. B-162, having tentatively admeasuring built up area 5328 sq. ft. constructed on plot area admeasuring 290 sq. yds. vide allotment letter dated 19.07.2013. Thereafter, a villa buyer's agreement was executed on 05.12.2013 inter-se parties for the total sale consideration of Rs.3,83,56,710/- . That the complainant has opted for subvention linked payment plan. Therefore, on 06.12.2013, a tripartite agreement was executed between the complainant, respondent and HDFC Limited and the HDFC Limited has granted a loan of Rs.2,88,00,000/- towards the sale consideration of the said villa. As per terms and conditions

mentioned in the tripartite agreement, the respondent/promoter had agreed to assume the liability of payments under the loan agreement as payable by the borrower to HDFC from date of first disbursement till 30.11.2015, and that period be referred to as the "Liability Period" and the liability be referred to as "Assumed Liability". Further, as per clause 5.1 read with clause 1.5 of the said agreement, the respondent proposed to offer the possession of the unit/ villa within 36 months from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 05.12.2016.

19. At the time of booking, the complainant was allotted a semi-finished residential villa bearing no. B-162, which was later changed to B-195. However, vide email dated 12.09.2014, the complainant has given confirmation of the new villa B-195 with an additional PLC of 2.5 of the basic cost. Pursuant to this, on 17.09.2014, the complainant was allotted semi-finished residential villa bearing no. B-195, having tentative admeasuring built up area 5328 sq. ft. constructed on plot admeasuring 290 sq. yds., for total sale consideration of Rs.3,95,57,235/- . An addendum to the agreement was also executed in this regard on 15.06.2018 and on the same date, a fresh tripartite agreement was also between the complainant, respondent and HDFC Limited and HDFC sanctioned a loan of Rs.2,88,00,000/- towards the sale consideration of the said villa. The complainant has paid an amount of Rs.3,42,51,177/- (i.e., 86.58% of the total sale consideration of Rs.3,95,57,235/-) against the said villa. The last payment made by the complainant is 08.07.2019.

20. The respondent issued an offer of possession to the complainant on 07.03.2020, along with a demand for payment of outstanding dues, followed by the final demand letter dated 16.04.2020, for clearing the payment of outstanding dues. However, the complainant failed to make the payment as per the said demand and reminder. Therefore, the respondent has cancelled

the unit of the complainant vide cancellation letter dated 28.05.2020, on account of non-payment of outstanding dues. Now the question arises before the Authority is whether the offer of possession letter date 07.03.2020 as well as the cancellation letter dated 28.07.2020 are valid in the eyes of law or not?

21. Upon consideration of the documents available on the record and the submissions made by both parties, the Authority observes that the respondent issued an offer of possession of the allotted semi-finished residential villa on 07.03.2020 without obtaining OC/Part CC/CC from the competent authority. Thereafter, the respondent issued a final demand letter on 16.04.2020 and subsequently cancelled the allotment on 28.05.2020, due to non-payment of outstanding dues. It is noteworthy to mention that the respondent has obtained the occupation certificate in respect of the allotted unit from the competent authority unit only on 02.07.2020.

22. Firstly, the Authority would like to clarify regarding the concept of "valid offer of possession". It is necessary to explain this concept because after valid and lawful offer of possession, the liability of promoter for offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and the allottee remains entitled to receive interest for the delay caused in handing over valid possession. The Authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining completion certificate.
- ii. The subject unit must be in habitable condition.
- iii. Possession should not be accompanied by unreasonable additional demands.

23. It is observed that the respondent had offered the possession of the subject unit on 07.03.2020 i.e., without obtaining of occupation certificate, as the occupation certificate was obtained from the competent authority on 02.07.2020. So, without getting occupation certificate, the respondent is not competent to issue any offer of possession to the complainant. It is well settled that, for a valid offer of possession, there are three prerequisites which must be satisfied, as the same are mentioned above. In view of the above-mentioned reasoning, the offer of possession offered by respondent on 07.03.2020 cannot be considered as a valid or lawful offer of possession.

24. Secondly, the Authority observes that the unit of the complainant was cancelled on 28.05.2020, due to non-payment. It is pertinent to note that as per the payment plan, the complainant and the HDFC bank has agreed to pay as per payment plan of subvention, it is evident from the above reasoning, the respondent has not raised the valid demand, as per the agreed payment plan. The agreed payment plan is reproduced below for ready reference: -

Annexure-C
Payment Plan

Payment plan of subvention of Visionnaire	
At the time of booking within 45 days of booking	Rs.20 Lacs / Rs.25 Lacs / Rs.40 Lacs To Complete 15% of BSP + 15% DC + 15% PLC other than road 24M (customer)
Start of excavation	25% of BSP + 25% DC + 25% PLC other than road 24M (Bank)
On casting of 1st floor roof slab	10% of BSP + 10% DC + 10% PLC other than road 24M (Bank)
On casting of 2nd floor roof slab	30% of BSP + 30% DC + 30% PLC other than road 24M (Bank)
On completion of external plaster	10% of BSP + 10% DC + 10% PLC other than road 24M (Bank)
On offer of possession	10% of BSP + 10% DC + 10% PLC other than road 24M + PLC Road 24M + CMC + PBIC + IFMS + Stamp Duty + Reg. (Customer)

25. In view of the reasons quoted above and documents available on record, the Authority is of the view that the cancellation letter dated 28.05.2020 is not

valid in the eyes of law. This is because the demand raised pursuant to the offer of possession dated 07.03.2020, as detailed in para 22-23, is not a valid offer of possession. Consequently, the final demand letter dated 16.04.2020, which was based on the invalid offer, also cannot be sustained. Accordingly, the cancellation letter dated 28.05.2020 is hereby set aside.

26. Furthermore, during proceedings dated 20.11.2025, the counsel for the respondent has stated that till date no third-party rights have been created over the subject unit of complainant. In the light of these observations, the respondent is directed to restore the allotted unit/villa of the complainant within 30 days from the date of this order.

27. Admissibility of delay possession charges at 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, *ibid*. 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]

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.

28. The legislature in its wisdom in the subordinate legislation under the 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.

29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 11.12.2025

is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

30. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

the 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;"

31. Moreover, the interest (DPC) component is levied to balance the time value component of the money. However, the same is applicable on the amount paid by allottee for the delay in handing over of the possession by the respondent and the same is balanced vide provision of Section 2(za) of the Act. The complainant cannot be made suffer due to fault of the respondent and suppose to pay for the unit as per today's rate.

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

33. In the present complaint, the respondent has failed to handover the possession of the subject unit within the stipulated time period. the occupation certificate for subject unit/ villa was obtained by the respondent from the competent authority only on 02.07.2020. Accordingly, it is failure of

the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to handover the possession within the stipulated period. Moreover, the fact cannot be ignored that occupation certificate is a public document as well as Section 19(10) of the Act, 2016 also conferred obligation over complainant/allottee to take the possession of the subject unit within two (2) months from grant of occupation certificate by the competent authority. The relevant Section is reproduced as below:

19(10) Every allottee shall take possession of the apartment, plot or building as the case may be, within a period of two months of the occupation certificate issued for the said apartment, plot or building as the case may be.

34. Section 19(10) of the Act, 2016, it is the duty of the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of occupation certificate. This 2 months' time is reasonable time to be given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit and other procedural documentations etc.

35. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) and Section 19(10) of the Act, 2016, on the part of the respondent is established. As such, the complainant is entitled to get delay possession charges at prescribed rate of the interest @ 10.85% p.a. w.e.f. the due date of possession i.e., 05.12.2016 till the date of receipt of occupation certificate from the competent authority i.e., 02.07.2020 plus two months i.e., up to 02.09.2020, as per section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.

36. That as per Section 19(6) and 19(7) of the Act, 2016, every allottee shall be responsible to make necessary payment as per the agreement for sale along with prescribed interest on outstanding delayed payments from the allottee. In view of the same, the complainant shall make the requisite payment within a period of 2 months of the date of issuance of issue a revised account statement after adjustment of delayed possession charges within a period of 30 days and the complainants are directed to pay the outstanding dues, if any remains after adjustment of interest for delayed period to the respondent, as per the provisions of Section 19(6) and 19(7) of the Act, 2016.

H.VII Direct the respondent to provide the exact lay out plan of the said unit and to execute the sale deed and handover the actual physical possession of the unit after completing in all aspect to the complainant.

37. The complainant is seeking direction to respondent to provide the exact layout plan. It is observed by the Authority, that as per Section 19(1) of the Act, 2016, it is the right of every allottee(s) to obtain the information relating to the sanctioned plans, layout plans etc. The relevant part of Section 19(1) is reproduced for ready reference:

19(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

38. Accordingly, the Authority hereby directs the respondent/promoter to provide the exact layout plan of the subject unit to the complainant/allottee within 30 days from the date of the order.

39. Further the complainant is seeking execution of the conveyance deed of the allotted unit in favour of the complainant. The respondent has obtained the occupation certificate from the competent authority on 02.07.2020 and as per clause 5.3 of the agreement dated 05.12.2013, the respondent shall prepare and execute along with allottee(s) a conveyance deed to convey the title of the said apartment in favour of the allottee but only after receiving full

payment of total price of the apartment. The relevant clause 5.3 is reproduced for ready reference:

5.3 The purchaser(s) agree that the seller/ confirming party shall execute the conveyance deed and get it registered in favour of the purchaser(s) only after receipt of total sale consideration, other charges/ amounts and statutory dues including but not limited to any enhancements and fresh incidence of tax along with connected expenses like cost of stamp duty, registration fees/ charges and other expenses of the conveyance deed which shall be borne and paid solely by the purchases(s). further the seller/confirming party shall endeavour to execute the conveyance deed in favour of purchaser(s) within 30 days from the date of the purchaser(s) intimating in writing the receipt of the certificate of use and occupation of the said unit from the competent authority.

40. 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 apartment 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.

41. As far as the relief of transfer of titled is concerned the same can be clearly said to be the statutory right of the allottee as per Section 17(1) of the Act provide for transfer of title. As occupation certificate of the unit has been obtained from the competent authority on 02.07.2020. 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 to execute the conveyance deed of the allotted unit in favour of the complainant after payment of applicable 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.

H.VIII Direct the respondent to refund the GST amount calculated from the complainant as the due date of handing over of the possession comes before the date of enforcement of the GST.

42. The counsel for the complainant submitted that GST came into force on 01.07.2017 and the possession was supposed to be delivered by 15.12.2016. Therefore, the tax which came into existence after the due date of possession and this extra cost should not be levied on the complainant. On the other hand, the counsel for the respondent denied that any amount towards GST is liable to be returned to the complainant and the demand towards GST are statutory demands which cannot be evaded.

43. The Authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.

44. In the present complaint, the possession of the subject unit was required to be delivered by 15.12.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondent/promoter is not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the said agreement as has been held by ***Haryana Real Estate Appellate Tribunal, Chandigarh*** in appeal bearing no. **21 of 2019** titled as ***M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi***. The Authority also concurs on this issue and holds that the difference between Post-GST and Pre-GST shall be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax fixed by the government.

H.IX Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

45. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. *4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.*

H.X To restrain the respondent from raising fresh demand for payment under any head, as the complainant has already paid the sale considerations and to set aside one-sided demand letters;

H.XI Direct the respondents not to charge anything irrelevant which has not been agreed to between the parties like labour cess, electrification charges, maintenance charges etc, which in any case is not payable by the complainant;

H.XII Pass such other or further order(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case and in the interest of justice.

46. The respondent is directed to raise the demand only as per the payment plan agreed between both the parties. Further the respondent is directed not to charge anything from the complainant, which is not the part of the builder buyer's agreement dated 05.12.2013.

I. Directions of the Authority

47. 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):

i. The cancellation letter dated 28.05.2020 is not valid and is bad in the eyes of law and is hereby set aside. Therefore, the respondent-promoter is directed to restore the allotted unit/ villa of the complainant, within 30 days from the date of this order.

- ii. The respondent is directed to pay the interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% p.a. w.e.f. the due date of possession i.e., 05.12.2016 till the date of receipt of occupation certificate (i.e., 02.07.2020) from the competent authority plus two months i.e., up to 02.09.2020, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of such interest accrued so far shall be paid by the respondent/promoter to the complainant/allottee within a period of 90 days from date of this order, as per Rule 16(2) of the Rules, ibid.
- iii. The rate of interest chargeable from the complainant/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 same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per Section 2(za) of the Act.
- iv. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within a period of 30 days and the complainant is directed to pay the outstanding dues, if any remains after adjustment of interest for delayed period.
- v. The respondent is further directed to handover the physical possession of the unit to the complainant complete in all aspect of buyer's agreement, as per obligations under Section 11(4) (b) read with section 17 of the Act, 2016 and the complainant is also obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.
- vi. The respondent is further directed to execute the registered conveyance deed in terms of Section 17 (1) of the Act of 2016 within a period of 90 days after payment of requisite stamp duty and administrative charges by the complainant.

vii. The respondent is further directed to provide the exact layout plan of the subject unit to the complainant/allottee within 30 days from the date of the order.

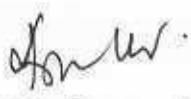
viii. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement dated 05.12.2013.

48. Complaint as well as applications, if any, stand disposed of accordingly.

49. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.12.2025



HARERA
GURUGRAM