

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

Date of decision: 14.10.2025

NAME OF THE BUILDER		M/s Pioneer Urban Land & Infrastructure Private Limited	
PROJECT NAME		"Presidia"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/349/2024	Ratna Shri Buildtech Private Limited V/s Pioneer Urban Land & Infrastructure Private Limited	Shri Mohd. Imran (Advocate) Shri Mohit Arora (Advocate) Sh. Nikhil Ahuja (Advocate) with Sh. Vinit Attre AR
2.	CR/353/2024	Ratna Shri Buildtech Private Limited V/s Pioneer Urban Land & Infrastructure Private Limited	Shri Mohd. Imran (Advocate) Shri Mohit Arora (Advocate) Sh. Nikhil Ahuja (Advocate) with Sh. Vinit Attre AR

CORAM:

Sh. Ashok Sangwan
Sh. Phool Singh Saini

**Member
Member**

ORDER

- This order shall dispose of the above 2 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed

that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Presidia' being developed by the same respondent promoters i.e., M/s Pioner Urban Land and Infrastructure Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issue involved in all these cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question, seeking award for delayed possession charges and not to create third party rights etc.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Presidia at Sector – 62, Gurugram.
Occupation Certificate: - Not Obtained	
Possession Clause: -	
<p>Clause No. 9.2</p> <p><i>"The FIRST PARTY shall make all efforts to apply for the Occupation Certificate of the proposed residential project within thirty-six months (36) months from the date of signing of the Buyer's Agreement subject to such limitations as be provided in this Buyer's Agreement and the timely compliance of the provisions of the Buyer's Agreement by the SECOND PARTY. The SECOND PARTY agrees and understands that the FIRST PARTY shall be entitled to a grace period of hundred and eighty days (180) days, after the expiry of thirty-six (36) months, for applying and obtaining the Occupation Certificate in respect of the said complex."</i></p>	

Sr. No	Complain No., Case Title, Date of filing, Date of reply	Date of allotment, Date of agreement	Due Date, Total sale consideration, Amount paid	Occupation certificate Intimation of possession	Demand Letters Notice of termination	Show cause notice by the respondent regarding termination	Relief Sought
1.	CR/349/2024 Ratna Shri Buildtech Private Limited V/s Pioneer Urban Land & Infrastructure Private Limited 09.02.2024 30.05.2024	09.11.2010 08.12.2010	06.06.2014 TSC- Rs. 2,89,59,682/- AP-Rs 2,68,87,138/-	14.11.2017 (As per page133-134 of complaint) 13.11.2017 (As per page114-132 of complaint)	12.07.2019, 11.05.2020 (Page 154-159 of complaint) 21.05.2020 (As per page 5 of reply)	26.03.2024 (As on page 27 of reply)	1.Direct the respondents to handover possession of the unit to the complainant, complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities, warranties and as per the quality standards promised and to execute the conveyance deed and all necessary and required documents in respect of the unit in favour of the complainant immediately. 2.Direct the respondents to pay delayed possession charges as per the proviso of section 18(1) of the Act, at the prevailing rate of interest @10.85% p.a i.e MCLR + 2% for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e 06.06.2014 till the date the actual physical possession is handed over by the respondent along with all the necessary

							<p>documents and common area and facilities as promised at the time of booking being made by the complainant.</p> <p>3.Direct the respondents to not create any third-party rights with respect to the residential unit bearing o. TB-902, on 9th floor, admeasuring 4111 sq/ ft.(approx.) in the project.</p> <p>4.Direct the respondents to waive off the interest charged @ 18% on the due amount and thereby to reissue valid offer of possession and not to charge any amount which is not part of the buyer's agreement.</p> <p>5.Direct the respondent to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment and Rs. 1,00,000/- towards the litigation cost.</p>
2.	CR/353/ 2024 Ratna Shri Buildtech Private Limited V/s Pioneer Urban Land & Infrastru cture Private Limited	09.11. 2010 08.12. 2010	06.06.201 4 TSC- Rs. Rs.3,33,07, 110/- AP-Rs 3,12,03,12 0/-	14.11.20 17 (As per page 133-134 of complain t) 13.11.20 17 (As per page114- of complain t)	13.11.2 017 (Page 117 of complai nt) 21.05.2 020 (As per page14 7 of complai nt)	26.03.20 24 (As on page 27 of reply)	<p>1.Direct the respondents to handover possession of the unit to the complainant, complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities, warranties and as per the quality standards promised and to execute the</p>



	09.02.20 24						conveyance deed and all necessary and required documents in respect of the unit in favour of the complainant immediately.
	30.05.20 24						<p>2.Direct the respondents to pay delayed possession charges as per the proviso of section 18(1) of the Act, at the prevailing rate of interest @10.85% p.a i.e MCLR + 2% for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e 06.06.2014 till the date the actual physical possession is handed over by the respondent along with all the necessary documents and common area and facilities as promised at the time of booking being made by the complainant.</p> <p>3.Direct the respondents to not create any third-party rights with respect to the residential unit bearing o. TB-1802, on 18th floor, admeasuring 4530 sq/ ft.(approx.) in the project.</p> <p>4.Direct the respondents to waive off the interest charged @ 18% on the due amount and thereby to reissue valid offer of possession and not to charge any amount which is not part of the</p>

							buyer's agreement. 5. Direct the respondent to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment and Rs. 1,00,000/- towards the litigation cost.
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows: Abbreviation Full form TSC -Total Sale consideration AP- Amount paid by the allottee(s)							

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units to deliver timely possession of the units in question, seeking award for delayed possession charges and not to create third party rights etc.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/349/2024 titled as Ratna Shri Buildtech Private Limited V/s M/s Pioner Urban Land and Infrastructure Limited** are being

taken into consideration for determining the rights of the allottees qua deliver timely possession of the units in question, seeking award for delayed possession charges and not to create third party rights etc.

A. Unit and project related details

7. 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:

S. No.	Particulars	Details
1.	Name of the project	Presidia at pioneer park, Sector-62, Gurugram
2.	Project area	2.71 acres
3.	Nature of the project	Group Housing Colony
4.	RERA Registered/Unregistered	Registered
5.	If registered, registration No. and validity of registration	Registration No. 69 of 2017 dated 18.08.2017 valid up to 30.12.2019
6.	Unit no.	Unit No. TB-902, 9th floor Tower B 4111 sq.ft. area Revised to 4384 sq. ft. as per intimation possession letter (6.2%) (on page no. 08 of complaint)
7.	Date of Booking	07.11.2010
8.	Date of Allotment	09.11.2010 (As on page no. 42 of complaint)
9.	Date of execution of apartment buyer's agreement	08.12.2010 (As on page no. 49 of complaint)
10.	Possession clause in the BBA.	Clause No. 9.2 "The FIRST PARTY shall make all efforts to apply for the Occupation Certificate of the proposed residential project within thirty-six months (36) months from the date of signing of

		<i>the Buyer's Agreement subject to such limitations as be provided in this Buyer's Agreement and the timely compliance of the provisions of the Buyer's Agreement by the SECOND PARTY. The SECOND PARTY agrees and understands that the FIRST PARTY shall be entitled to a grace period of hundred and eighty days (180) days, after the expiry of thirty-six (36) months, for applying and obtaining the Occupation Certificate in respect of the said complex."</i>
11.	Due date of possession as per BBA	06.06.2014 (Clause 9.2 including grace period)
12.	Total sale consideration	Rs.2,89,59,682 /- (As on page no. 53 of complaint)
13.	Amount paid by the complainant	Rs.2,68,87,138/- (As on page no. 87 of the Reply)
14.	Occupation certificate	14.11.2017 (As per page 133-134 of complaint)
15.	Intimation of possession	13.11.2017 (As on page no. 114-132 of complaint)
16.	Demand Letters	12.07.2019, 11.05.2020 (Page 154-159 of complaint)
17.	Notice of termination	21.05.2020 (As per page 160 of complaint)
18.	Email conversation between Complainant and respondent regarding Income Tax Department Issues	27.12.2022 and 17.01.2023 (As on page no. 168-177 of the Complaint)
19.	Show cause notice by the respondent to the complainant	26.03.2024 Wherein cancellation was upheld and time was given to the complainant to pay

		(As on page no. 27 of the reply)
20.	Total Outstanding amount as per respondent	Rs. 1,41,09,200/- (As on page no. 32 of the reply)

B. Facts of the complaint:

8. The complainant has made the following submissions:

- I. That the complainant in the year 2010 was looking to purchase a residential apartment, and the complainant was approached by the respondent for purchasing a unit in the group housing society being developed by the respondent named 'Presidia at Pioneer Park" situated at Sector 62, Gurugram, Haryana. Based on the various representations made by the respondent, the complainant paid an amount of Rs. 15,00,000/- vide Cheque No. 520746 dated 07.11.2010 towards the booking of a unit in the project of the respondent on 07.11.2010.
- II. That thereafter, the respondent issued an allotment letter dated 09.11.2010 and allotted unit bearing no. TB-902 on the 9th floor, having a super area of 4111 sq. ft. in the project. The respondent even before executing the builder buyer agreement has raised a demand along with the allotment letter of sum amounting to Rs. 41,41,936/-towards the consideration of the unit. The respondent executed a buyer's agreement dated 08.12.2010 in favour of the complainant. The agreement entered into between the parties contained various one-sided and arbitrary clauses, but the complainant could not negotiate any of the clauses, as the respondent had already collected a substantial amount towards the consideration of the unit from the complainant prior to the execution of the agreement and there was a constant threat of

forfeiture of the amount or cancellation of the allotment, in case of any disagreement or dispute thereto. It should be noted that as per clause 1.10 of the agreement, if the complainant commits a delay in making payments towards the sale consideration of the unit, they shall be liable to pay interest on the delayed payment @ 18% p.a. Whereas, as per Clause 9.5 of the Agreement, if the respondent promoter commits a delay in offering possession of the unit, it shall only be liable to pay compensation of Rs. 10/- per sq. ft. per month till the date the actual possession of the unit is offered, which is highly miniscule and unfair.

- III. That as per clause 9.2 of the agreement, the respondent had assured and represented that the possession of the said unit after its construction will be handed over within a period of 36 months from the date of execution of the buyer's agreement along with a grace period of 180 days (for grant and receipt of occupation certification). Hence, the possession of the unit was to be delivered by 06.06.2014. The complainant had opted for a construction-linked payment plan and diligently followed the payment plan and made payments as when the demands were raised by the respondent. As per clause 1 of the agreement, the total consideration of the unit was Rs. 2,89,59,68/- out of which the respondent had collected more than 90% i.e., Rs.2,68,87,135/- by May, 2015. The respondent miserably failed to handover possession of the unit within the promised time period i.e., by June, 2014.
- IV. That the complainant followed up with the representatives of the respondent raising their grievances and concerns regarding the slow pace of construction and also seeking an affirmative date of

possession. However, the respondent kept the complainant in dark by giving false assurances that the possession shall be offered soon, and kept on extending the date of possession on one pretext or another.

- V. That on 13.11.2017 i.e., after a delay of more than 3 years from the promised date of possession, the respondent issued the notice of possession to the complainant vide letter of intimation of possession and thereafter, the occupancy certificate for the tower b in which the unit was allotted to the complainant was received by the respondent on 14.11,2017 from DTCP, Haryana. In view of the same, the complainant was interested in taking possession of the unit even after an inordinate delay of more than 3 years from the promised date of possession. However, the complainant was shocked to see that the respondent asked for an excess payment of Rs. 43,54,783/- against the due amount of Rs. 20,72,544/-. That the demand for the amount of Rs. 64,27,327/- under various heads was raised on the pretext of increased sale area (21,13,571/-), ad hoc charges (2,71,636/-) and GST which was not part of total sale consideration as per the agreement. It may be noted that no prior communication or approval was obtained from the complainant regarding any increase in the saleable area, ad hoc charges beyond what was approved in the original sanction plans and what was represented in the buyer's agreement. The respondent has not fairly compensated for the delay caused by offering possession of the unit to the complainant. Instead, the respondent offered only a minuscule sum of Rs 12,54,111/- the delay i.e, @Rs. 10/- per sq. ft. of the super area per month for the first year and @Rs. 10/- per month for the subsequent period of such delay.

VI. That alongside these arbitrary demands being raised by the respondent, the director of the complainant was under financial and mental pressure as during this period the Income Tax Department vide an order u/s 281B of the Income Tax Act, 1961 dated 23.11.2017 had provisionally attached the said unit in dispute and the complainant's bank account was also freeze as a part of the said assessment proceedings, Due to these unforeseen circumstances the complainant was deprived of taking possession of the unit and could not negotiate on the demands being levied by the respondent qua these factors. Following these developments, the complainant, on 05.12.2017, and subsequently on 18.02.2019, wrote an email to the representative of the respondent, expressing their inability to fulfil the balance payment obligations due to the aforementioned extraneous factors. The complainant, in light of having already disbursed approximately 95% of the total consideration upon demand by the respondent formally requested the waiver of any penal interest associated with the outstanding instalment amount for the consideration towards the unit. Despite that the respondent neglected to address the legitimate concerns raised by the complainant, thereby exacerbating the dispute. The respondent has offered compensation to the complainant @Rs.5/- per sq. ft. of the super area per month for the first year and @Rs. 10/- per month for the subsequent period of such delay till the date of letter of intimation for possession, however, the complainant would be liable to pay exorbitant interest @18% per annum on any delay in making payment to the respondent from the due date of payment of instalment.

- VII. That on a bare perusal of the statement of account dated 11.01.2024 sent by the respondent it is seen that the respondent has charged from the complainant an exorbitant amount of interest i.e., Rs. 73,85,809/-calculated @18% p.a. on the due amount to be paid by the complainant, which is ex-facie one-sided, unfair, and unreasonable and cannot be made binding to the complainant. Further, on a bare perusal of the final reminders and the demand / tax invoice annexed with the offer of possession dated 13.11.2017 shows that the respondent has charged GST on the demand letters dated 13.11.2017 vide Invoice No. 9100000096, 91/ 0000169, and 9100000151 whereas, as per clause 9.2 of the agreement, the due date of possession comes out to be 06.06.2014 which is prior to 01.07.2017 (date of coming into force of GST). The respondent has offered the possession of the allotted unit on 13.11.2017 by that time the GST has become applicable but such delay in delivery of possession is on the part of the respondent. It is a settled principle of law that a person cannot take the benefit of his own wrong default.
- VIII. That the complainant being conscious and worried about the possession of the unit, was shocked to see that the respondent had arbitrarily cancelled the unit of the complainant vide a notice of termination letter dated 21.05.2020. The respondent is acting in the most despotic and horrendous manner, which amounts to unfair trade practice as well as such an act is against the settled principle of law and natural justice.
- IX. That it is apposite to mention herein that the Income Tax Department on 27.12.2022 vide a letter of assessment proceedings u/s 281 b of the IT Act, 1961 informed the complainant that the

assessment proceedings are completed and the properties attached in connection with the said proceedings are released, It is submitted that the complainant with an intention to take the possession of the unit had on several occasions requested the representatives of the respondent to revise the demands raised by them as they are unfair and arbitrary. Further, various emails were also sent by the complainant to meet the representative of the respondent in order to resolve the said dispute, however, all such efforts made by the complainant went in vain as the respondent refused to entertain and pay heed to any of the request made by the complainant.

- X. The respondent's claim for penal interest is excessive, one-sided, and against settled law. Clause 1.1 of the agreement imposes interest at 18% per annum on any delay in payment by the buyer. In contrast, the promoter's liability for delay in possession is negligible. This one-sided clause is manifestly unfair and contrary to the mandate of the RERA Act. Therefore, the penal interest claimed by the respondent amounting to Rs. 78,96,749 is unreasonable, excessive, and liable to be quashed and no offer of valid possession was made to the complainant.
- XI. Written submissions were filed by the complainants. The same were taken on record and perused further.

C. Relief sought by the complainant:

- 9. The complainant has sought following relief(s):
 - i. Direct the respondents to handover possession of the unit to the complainant, complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities, warranties and as per the quality

standards promised and to execute the conveyance deed and all necessary and required documents in respect of the unit in favour of the complainant immediately.

- ii. Direct the respondents to pay delayed possession charges as per the proviso of section 18(1) of the Act, at the prevailing rate of interest @10.85% p.a i.e MCLR + 2% for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e 06.06.2014 till the date the actual physical possession is handed over by the respondent along with all the necessary documents and common area and facilities as promised at the time of booking being made by the complainant.
- iii. Direct the respondents to not create any third-party rights with respect to the residential unit bearing o. TB-902, on 9th floor, admeasuring 4111 sq/ ft.(approx.) in the project.
- iv. Direct the respondents to waive off the interest charged @ 18% on the due amount and thereby to reissue valid offer of possession and not to charge any amount which is not part of the buyer's agreement.
- v. Direct the respondent to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment and Rs. 1,00,000/- towards the litigation cost.

D. Reply by the respondent:

10. The respondent contested the complaint on the following grounds:

- I. That in the year 2010 the respondent had launched its project namely Presidia situated in Sector 62, Gurugram, Haryana. Pursuant to that, the Complainant herein expressed his desire to purchase a unit in the Project "Presidia (at Pioneer Park)". On 07.11.2010, the complainant paid a sum of Rs. 15,00,000/- as earnest money towards allotment of

an apartment in the project. After the earnest money payment, the complainant was vide allotment letter dated 09.11.2010, was allotted a unit bearing no. TB-902, 9th Floor, admeasuring 4111 sq. ft. in the said project.

- II. That a builder buyer agreement dated 08.12.2010 was entered into between the complaint and the respondent whereby the complainant had agreed to pay an amount of Rs. 2,89,59,682/-) towards the sale consideration in respect of the said apartment, as per the payment schedule. The respondent herein had agreed to handover peaceful possession of the property within 36 months with a further period of 180 days as grace period from the date of excavation. However, due to force majeure circumstances, there was a delay in the completion of the project and the respondent received occupation certificate from DTCP, Haryana for tower b of the project on 14.11.2017. Accordingly, on 13.11.2017, the respondent offered the physical possession of the apartment to the complainant, requesting them to take possession of the apartment and complete all the necessary formalities thereof.
- III. That the respondent raised a demand invoice dated 13.11.2017 urging the complainant to clear all outstanding dues of Rs. 51,76,133 in respect of increased super area of the unit, balance instalments amount etc. along with interest as per the bba. Details of the outstanding balance to be paid by the complainant to the respondent has been enumerated below for the purpose of convenience:

Head	Amount
Balance Sale Consideration	54,21,849
Other Charges (Electrical Sub Station Charges)	2,71,636

Interest	2,922.61
Advance CAM	2,11,063
VAT	5,22,774
Credit Note	-12,54,111
Total Outstanding: 51,76,133	

- IV. That the respondent in compliance of the law as envisaged under Real Estate (Regulations and Development) Act, 2016 also issued a credit note dated 13.11.2017 in favour of the complainant for an amount of Rs. 12,54,111/- as delay penalty due to delay in handing over of possession. Despite several notices issued by the respondent, the complainant till date has not cleared the outstanding balance amount of Rs. 51,76,133 along with accrued interest and holding charges. Even despite offering possession vide letter dated 13.11.2017 to the complainant, the respondent is bearing the holding and maintenance charges out of its own pocket due to the failure of the complainant to take possession by clearing all outstanding dues/balance.
- V. That it is pertinent to note that since 12.05.2015 the complainant has not made any payment towards the balance sale consideration as envisaged under the bba entered between the parties, despite several notices regarding the same being issued by the respondent to the complainant.
- VI. That the respondent vide its letter dated 12.07.2019 and an email dated 11.05.2020 gave a final reminder to the complainant to clear all the outstanding dues in respect of the unit purchased by the complainant in the project. The complainant has not made any payment towards the instalments covering principal amount, interest, maintenance charges etc. However, no reply was received by

the respondent from the complainant. The respondent vide its letter dated 21.05.2020 issued a notice of termination to the complainant whereby final opportunity was granted to the complainant to cure and rectify its default within 30 days, failing which the allotment shall stand cancelled. Pertinently, in order to prevent loss of goodwill in the market and with the complainant, as on date, the respondent has not cancelled the allotment of the complainant. The complainant despite being given ample time and opportunity has failed to fulfil its obligation and take possession of the unit by making the requisite payment, hence the allotment of the complainant stands terminated.

- VII. That the respondent vide its notice dated 26.03.2024 issued a show cause notice to the complainant to clear all the outstanding dues in respect of the unit purchased by the complainant in the project. It is pertinent to note that the complainant has not made any payment towards the instalments covering principal amount, interest, maintenance charges etc. However, no reply was received by the respondent from the complainant.
- VIII. That the present complainant has been filed maliciously by the complainant with malafide intention to harass the Respondent. Further, the complaint filed by the complainant suppresses several material facts and is also devoid of any merit.
- IX. That the present complaint filed by the complainant is barred by law of limitation. It is pertinent to note that due to persistent defaults of the complainant in making of payments as per the bba, the respondent had already issued a notice of termination of the allotment of the unit vide letter of termination dated 21.05.2020. That, now the complainant after expiry of almost 4 years from the date of cancellation of the allotment has filed the present complaint

claiming possession of the said unit, despite the fact that the allotment of the said unit has already been terminated. Therefore, the present complaint is in itself an abuse of the process of law and the same is highly delayed. Further, it is pertinent to note that as per Article 137 of The Schedule as provided under Limitation Act, 1963, the period of limitation for any application/complaint etc. for which no specific limitation has been prescribed under the Act has been capped at 3 years from the date when the right accrued or cause of action started. Therefore, in the present case the limitation would commence from 21.05.2020 i.e., the date of termination of allotment.

- X. That the right to sue i.e., cause of action, if any, should have accrued to the complainant from the date of cancellation till 3 years. Since more than 3 years has elapsed, the present complaint is not maintainable before the Ld. Authority. It is the duty of this Ld. Authority to dismiss such complaints filed beyond the period of limitation. Once the period of 3 years has expired, the claim of the allottee is not maintainable before any forum including the civil courts and the consumer forum.
- XI. That the as per the bba entered between the parties, the complainant had agreed to pay the whole consideration amount to the respondent as per the agreed payment schedule. However, it is pertinent to note that since 12.05.2015 the complainant has not made any payment towards the balance sale consideration as envisaged under the bba entered into between the parties, despite several notices regarding the same being issued by the respondent to the complainant. As per the BBA entered into between the parties, it was agreed between the parties that if the allottee/complainant fails to make timely payment

as per the payment schedule, the complainant shall be liable to pay interest at the prescribed rate for the delay.

- XII. That the occupation certificate was obtained by respondent on 14.11.2017 and letter of possession was duly served to the complainant, however, the complainant has failed to clear the outstanding dues and take possession of the unit. That the complainant has failed to fulfil his obligations as envisaged under the Act. Therefore, the complainant is liable to pay interest on the outstanding dues and the same cannot be waived off.
- XIII. That as per the bba entered into between the parties, it was agreed by the parties that the super-area as stated in the agreement was tentative and was subject to change till the construction of the building was complete in all aspects. Further, it was agreed between the parties that in case of any increase in the super-area, the complainant would be liable to pay for the increased super-area 1.3. In the present case, it was agreed between the parties in the BBA that the super-area was tentative and could be changed till the construction of the project was complete. It is pertinent to note that the super-area of the unit in question was revised and was increased to 4384 sq. ft., however the complainant has failed to fulfil his obligations as per the bba and has not paid for the increase in super-area. Therefore, in view of the bba and the abovementioned judgments, the complainant is liable to pay for increased super-area and the same cannot be waived off.
- XIV. That as per the bba entered into between the parties, it was agreed by the parties that in case of more than one default of payment by the allottee/complainant, the respondent at its sole discretion issue notice of termination of allotment whereby giving the

allottee/complainant time to rectify and cure its default and make payment within the prescribed time period, failing which the allotment of the allottee/complainant shall stand terminated. Further, as per the rules envisaged under the Haryana Real Estate (Regulation and Development) Rules, 2017, upon default of two consecutive payments by the allottee, and if the said default continues for a period beyond 90 days, the promoter can issue a notice of termination giving the allottee 30 days to rectify and cure its default. However, if the allottee fails to rectify and cure the default, then the allotment of the allottee shall stand cancelled and the earnest money deposited by the allottee shall stand forfeited.

- XV. That in the present case, it is pertinent to note that since 12.05.2015 the complainant has not made any payment towards the balance sale consideration as envisaged under the bba entered into between the parties, despite several notices regarding the same being issued by the respondent to the complainant. It is respectfully submitted that since the complainant has failed to fulfil his obligations as envisaged under the Act, therefore, the complainant is liable to pay interest as envisaged under Section 19(7). The complainant has failed to fulfil his obligations as envisaged under Section 19(10) and take physical possession of the unit within two months of the grant of occupation certificate.
- XVI. Therefore, owing to the failure of the complainant to discharge his duty, the respondent vide its letter dated 21.05.2020 issued a notice of termination to the complainant whereby final opportunity was granted to the complainant to cure and rectify its default within 30 days, failing which the allotment shall stand cancelled and the earnest money deposited by the allottee shall stand forfeited. Pertinently, the

complainant has defaulted on more than two consecutive demands and the 90-day cure period to make balance payments is over as well. In view of the clear mandate of the RERA Act and Rules, the allotment ought to stand cancelled

- XVII. That as per the bba entered into between the parties, it has been agreed by the parties that the complainant shall reimburse the respondent any taxes/charges levied by the government or any other organisation. Therefore, from a bare perusal of the abovementioned clause, it becomes abundantly clear that it is the duty of the complainant to pay any and all taxes and other charges along with any other future charges/taxes, statutory or otherwise, levied or imposed on the unit. Further, it is pertinent to note that even prior to the enactment of GST, the complainant was liable to pay taxes as per the old taxation system, which has been agreed by the party and has been recorded in the BBA. Therefore, the complainant now cannot wriggle out of his liability to pay taxes/charges merely because of change in nomenclature of the taxation system. Hence, the complainant cannot seek to get the GST/Taxes waived off as that would be in contravention of the bba agreed and entered into between the parties.
- XVIII. That it is pertinent to mention here that pendency of income tax proceedings against the complainant does not entitle the complainant to get any benefit as being claimed in the present complaint. It is respectfully submitted that the respondent duly gave the credit note in favour of the complainant of the delay committed. However, in the same breath, the delay in making the payments towards the sale consideration and under various other heads by the complainant cannot be waived of because of alleged pendency of Income tax

proceedings. Further, the respondent had nothing to do with attachment of the suit property by the Income Tax Department, as alleged by the complainant. It is to be noted that the respondent is not a party to the proceedings between the complainant and the Income Tax Department, therefore, the respondent is not privy to the actions of the complainant which led to the attachment orders being passed with respect to the properties owned/allotted to the complainant, by the Income Tax Department. It would be also germane to note that the attachment order passed by the Income Tax Department, was after the offer of possession. Hence, the at the time of offer of possession to the complainant, no attachment orders were in existence. Furthermore, as per the records supplied by the complainant to the respondent as well as the documents filed on record, only the suit property had been attached by the department, not his bank accounts. Hence, there is no question of any monetary or financial hardship which could justify the delay in payments being made to the respondent herein.

- XIX. That in compliance of the prevailing laws, the respondent has already issued credit note dated 13.11.2017 in favour of the complainant for an amount of Rs. 12,54,111/- as delay penalty due to delay in handing over of possession. The respondent has acted bonafide and has already compensated the complainant for inadvertent delay due to force majeure circumstances. Hence the complainant cannot claim further compensation in form of delay penalty, when the same has already been offered to him by the respondent. Further, in respect of the additional compensation sought from the respondents in the present complaint in the nature of mental agony, harassment and litigation expenses, it is submitted that the grievance of the

complainants appears to arise out of their default in making timely payments towards the sale consideration as agreed by the parties in the bba. The complainant has failed make any payment towards the balance sale consideration since 12.05.2015. Despite several notices regarding issued by the respondent urging the complainant to make the requisite payment the complainant has not yet made any payment.

XX. Application filed by the respondent has been taken on record and perused further.

E. Jurisdiction of the authority:

11. 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;

Section 34-Functions of the Authority:

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

12. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding complaint being barred by the limitation

13. The respondent-promoter raised the contention that the complaint is barred by limitation as the respondent had already issued a notice of termination of the allotment of the unit vide letter dated 21.05.2020 and now the complainant after almost 4 years from the date of cancellation has filed the present complaint. After going through the documents available on record as well as submissions made by the parties, the Authority is of view that the law of limitation does not strictly apply to the Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that *"the law assists those who are vigilant, not those who sleep over their rights"*. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
14. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Sua Moto Writ Petition Civil No.3 of 2020** has held that the period from 15.03.2020 to 28.02.2022 shall

stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

15. In the present matter the cause of action arose on 21.05.2020, when the unit was terminated by the respondent. The complainant has filed the present complaint on 09.02.2024 which is 3 years 8 months and 19 days from the date of cause of action. Therefore, after taken into consideration the exclusion period from 15.03.2020 to 28.02.2022 as observed by the Hon'ble Apex above, it is determined that the present complaint is within limitation.

G. Findings on relief sought by the complainant:

- G.I Direct the respondents to handover possession of the unit to the complainant, complete in all respects and in conformity with the Buyer's Agreement and for the consideration mentioned therein, with all additional facilities, warranties and as per the quality standards promised and to execute the conveyance deed and all necessary and required documents in respect of the unit in favour of the complainant immediately.**
- G.II Direct the respondents to pay delayed possession charges as per the proviso of section 18(1) of the Act, at the prevailing rate of interest @10.85% p.a i.e MCLR + 2% for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e 06.06.2014 till the date the actual physical possession is handed over by the respondent along with all the necessary documents and common area and facilities as promised at the time of booking being made by the complainant.**
- G.III Direct the respondents to not create any third-party rights with respect to the residential unit bearing o. TB-902, on 9th floor, admeasuring 4111 sq/ ft.(approx.) in the project.**
- G.IV Direct the respondents to waive off the interest charged @ 18% on the due amount and thereby to reissue valid offer of possession and not to charge any amount which is not part of the buyer's agreement.**

16. The above-mentioned reliefs sought by the complainant are taken together being interconnected as the finding of one relief will definitely affect on the other one.
17. The present case was disposed of on 08.07.2025 with the following directions - *Order pronounced. The cancellation is held to be valid. The complaint is dismissed. Detailed order will follow. File be consigned to the registry.* However, while preparing the detailed order, it was found that though the allotment was cancelled vide letter dated 21.05.2020 which was placed in complaint file as Annexure -C-12, in reply filed by the respondent, the respondent has appended a letter dated 26.03.2024 as Annexure R-2 wherein the allotment was apparently revived by giving another opportunity to the complainant to pay the dues. Therefore, in view of the above facts a date was fixed for clarification regarding revocation of cancellation on 26.03.2024. The present case was thereafter listed and heard on 14.10.2025.
18. In the instant case, the complainant was allotted a unit in the project of the respondent on 09.11.2020. The apartment buyer agreement was executed between the parties on 08.12.2010 and the complainant paid a total sum of Rs.2,68,87,138/- out of the total sale consideration of Rs.2,89,59,682/-. As per clause 9.2 of the buyer agreement the seller proposed to apply for the occupation certificate of the proposed residential project within thirty-six months (36) months from the date of signing of the buyer's agreement along with grace period of hundred and eighty days (180) days, after the expiry of thirty-six (36) months, for applying and obtaining the occupation certificate in respect of the said complex.
19. As far as the grace period is concerned the same is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal

in ***Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari*** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:

"In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014."

20. Therefore, in view of the above judgement and considering the clauses of the agreement, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of comes out to be 06.06.2014 including grace period of 180 days.
21. The occupation certificate was obtained by the promoter on 14.11.2017 and the respondent offered the possession to the complainant on 13.11.2017.
22. The argument of the complainant hinges upon two issues. The first issue relates to the order of the Income Tax Department order under section 281B of the IT Act 1961, dated 23.11.2017 whereby the department had provisionally attached the unit of the complainant and the complainant's bank account was also frozen. Due to this, the complainant was not able to make the balance payment and take possession of the unit. The second issue stated by the complainant is that the respondent issued the demand for balance payment without adjusting the delay compensation and only offered compensation to the

complainant @Rs. 5 per sq. ft of super area per month for the first year and @Rs. 10 per month for the subsequent year while exorbitant interest at 18% per annum was imposed by the respondent for delayed payment by the complainant.

23. The Authority observes that the total consideration of the unit in terms of the buyer's agreement dated 08.12.2010 is Rs. 2,89,59,682/- excluding IBMS, stamp duty and registration charges. The complete payment was to be made up to the intimation for possession which was sent to the complainant on 13.11.2017. The complainant has paid an amount of Rs.2,68,87,138/- only against the said consideration till date. Even if the interest imposed upon the pending instalment is disregarded, the complainant has clearly failed to pay the outstanding dues as per the payment plan annexed with the buyer's agreement. So far as the issue regarding the inability of the complainant to pay the outstanding amount due to the order of the Income Tax Department is concerned, the respondent cannot be held liable to defer the payment in this regard as the said proceedings were not initiated on account of the respondent's actions and nor was the respondent party to the said proceedings.
24. As far as the termination of the allotment of the unit is concerned, the respondent vide letters dated 12.07.2019 and 11.05.2020 raised demands to be paid by the complainant and on failure to do so, finally terminated the allotment of the unit vide letter dated 21.05.2020 whereby final opportunity was also granted to the complainant to cure and rectify its default within 30 days. The respondent again gave an opportunity to the complainant vide letter dated 26.03.2024 wherein again an opportunity was given to the complainant to make the necessary payments to the company within 5 working days in order to

prevent any consequential interest, penalty and expenses for the delay. No payment was made by the complainant and therefore, the unit was cancelled on failure of payment of outstanding instalments outstanding instalments.

25. The complainant-allottee was under an obligation to make payment of outstanding dues as agreed between the parties vide agreement dated 08.12.2010. As per section 19(6) of the Act of 2016, every allottee who has entered into an agreement is responsible to make necessary payments in the manner and within the time as specified in the said agreement. In the present case, the complainants-allottee has not complied with the terms of the agreement, therefore, the cancellation dated 21.05.2020 of the unit is held valid.
26. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Indian Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as Jayant Singhal and Anr. VS. M3M India Private Limited decided on 26.07.2022***, held that 10% of basic sale price is a reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first

two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. Amount Of Earnest Money

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view **that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount** of the real estate i.e. apartment /plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

27. Keeping in view the aforesaid factual and legal provisions, the respondent can retain the earnest money paid by the complainant against the allotted unit and shall not exceed 10% of the consideration amount. So, the same was liable to be forfeited as per Haryana Real Estate Regulatory Authority Regulation 11(5). So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the sale consideration and return the remaining amount along with interest at the rate of 10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 21.05.2020 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G.V Direct the respondent to pay a sum of Rs. 10,00,000/- to the complainant for causing mental agony and harassment and Rs. 1,00,000/- towards the litigation cost.

28. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of*


Up & Ors. (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

H. Directions of the authority:

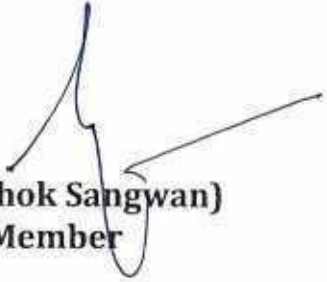
29. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to refund the amount received from the complainant after deducting the earnest money which shall not exceed the 10% of the sale consideration along with prescribed rate of interest @ 10.85% p.a. on such balance amount from the date of cancellation i.e 21.05.2020 till the actual date of realization.
- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.
- iii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
32. File be consigned to registry.



(Phool Singh Saini)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.10.2025

HARERA
GURUGRAM