BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**174 of 2024**
Order pronounced on:	**21.11.2025**

Ms Neetu Todi
Address: - Khasra no-382, Shop no. 240, 100-foot Road, MG Road, Ghitorni, New Delhi-110030 **Complainant**

Versus

M/s BPTP Limited
Both Address: - M-11, Middle Circle, Connaught Circus, New Delhi-110001

Respondent

CORAM:
Shri Arun Kumar **Chairman**

APPEARANCE:
Priyanka Agarwal (Advocate) Complainant
Shri Harshit Batra (Advocate) Respondent

ORDER

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

A. Project and unit related details

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

Sr. No.	Particulars	Details
1.	Name of the project	Terra, Sector-37D, Gurugram
2.	Nature of the project	Group Housing Towers
3.	Area of the project	19.74 acres
4.	Rera Registered	Registered 299 of 2017 Dated: - 13.10.2017
5.	DTCP Licence	Licence no.-83 of 2008 and 94 of 2011.
6.	Allotment letter	07.12.2012 (As on page no. 46 of complaint)
7.	Date of execution BBA	Not executed
8.	Unit no.	T20-1004 (As on page no. 46 of complaint)
9.	Unit area	1691 sq. ft. | Increased super area 1811 sq. ft. i.e., 7.1% increased
10.	Possession clause	***Clause G POSSESSION AND HOLDING CHARGES*** *subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s)having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser's* ***within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.*** *The Seller/Confirming Party shall be additionally entitled to a* ***Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.*** *[Emphasis supplied]*
11.	Grace period	Grace period allowed
12.	Date of sanction of building plan	21.09.2012 [As per page 6 of reply]

13.	Due date of possession	21.09.2016 [Calculated 42 months from date of sanction of building plan in the absence of date of flat buyer agreement + 180 days]
14.	Total sale consideration	Rs.1,30,75,745/- (As per statement of account page 129 of the reply)
15.	Total amount paid by the complainant	Rs.97,61,195/- (As per statement of account page 129 of the reply)
16.	In- principal Occupation certificate	09.12.2021 (As on page no. 124 of reply)
17.	Offer of possession for unit T20-1004 admeasuring 1811 sq. ft.	20.12.2021 [page 126 of reply]
18.	Payment request and reminder letter	01.04.2015, 02.07.2015, 02.12.2015, 10.12.2015, 13.10.2016, 05.01.2017, 08.01.2018, 22.08.2018
19.	Occupation certificate	24.08.2022
20.	Unit Termination /Cancellation letter sent on	05.02.2022 [page 145 of reply]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

i. That the complainant is a law-abiding citizen and consumer who has been cheated by the malpractices adopted by the respondent or known to be as the builder, is allegedly carrying out real estate development since many years. The complainant being interested in the project because as it was a housing project, desired to own a home for her family.

ii. That the allottee approached to the respondent for booking of a flat admeasuring 1691 sq. ft in BPTP Terra Sector- 37 D, Gurugram and paid booking amount Rs. 6,00,000/- and the same was the vide receipt no. respondents acknowledged by 2012/1400023652, dated 24.08.2012.

iii. That the complainant was allotted unit bearing no. T20-1004, in tower T20, admeasuring 1691 sq. ft. along with one covered car parking, vide allotment letter dated 07.12.2012.

iv. As per the payment plan annexed with the allotment letter, the total cost of the said unit was Rs. 1,04,62,642.00/- including BSP, Development charges, IFMS, Club membership charges, Car parking charges & fire-fighting & power backup installation charges.

v. That the respondent in order to dupe the complainant in their nefarious net, did not even execute any buyer's agreement signed between complainants and M/S BPTP Limited and kept on making excuses to delay the same using dilly dallying techniques and created a false belief that the project shall be completed in time bound manner and persistently raised demands due to which they were able to extract huge amount of money from the complainant.

vi. That the complainant tried multiple times and sent several emails to the respondent company requesting for the execution of agreement to sell, however, the response of the respondent company was always evasive.

vii. That the builder in last 11 years, made several false promises for possession of flat but the current status of the project is still desolated, raw, and incomplete. Evidently, the builder has breached the trust and agreement.

viii. That the complainant had booked the apartment in the year 2012 and in light of the aforesaid judgment of the Hon'ble Supreme Court, three years of time was sufficient for the respondent to handover the possession of the complainant's unit, thus the respondent was liable to handover the possession by 24.08.2015.

ix. Furthermore, in similar cases filed before this Hon'ble Authority, in regards to the project in question, i.e., "BPTP TERRA", this Hon'ble Authority has taken the due date to be 42 months from the date of execution of BBA or sanction of building plan, whichever is later, and the respondents have admitted that the date of sanction of building plan of

the project is 21.09.2012, therefore, the due date of possession comes out to be 21.03.2016.

x. The respondent company sent the statement of account dated 24.08.2018, as per which the total cost of the unit was Rs. 10,462,642.00/-, including BSP, Car Parking Charges, EDC, IDC, IMFS. Fire Fighting & Power Backup Charges and club membership charges. The respondent had also illegally charged Rs.1,46,815.00/-on account of interest.

xi. Complainant has paid all the instalments and deposited Rs. 97,61,195.00/- That respondents in an endeavour to extract money from allottees devised a payment plan under which respondent linked more than 20 % amount of total paid as an advance and linked 75% of amount with the construction of super structure only of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development rest 5% lined with offer of possession.

xii. That the respondent company sent an offer of possession of the unit bearing no. T20-1004, after 9 years of booking. However, the respondent illegally changed the super area of the unit from 1691 sq. ft. to 1811 sq. ft. without any prior intimation to the complainant and also raised an illegal demand of Rs. 33,14,550.42/- with added charges without providing any compensation for the delay in offering possession. The respondents have illegally increased the area of the complainant, thus, increasing the basic sale price of the complainant's unit.

xiii. That the respondent charged the additional charges in the name of escalation cost- The respondent charged escalation cost of Rs. 437 per sq. ft. as escalation cost in same project in different tower without any

justification actual estimated construction cost is Rs. 18395.09 Lakhs and land area to be used for construction of apartment is 63075 sq. Mtrs as per form A to H submitted in Hon'ble HARERA Authority at the time of registration of project dated 19.08.2020. The actual escalation in construction cost is Rs. 61.67 per sq. Ft only.

xiv. That respondents have also charged interest on in delayed payment to the tune of Rs. 3,49,598.42/- however, did not even offer a single penny on account of delayed possession charges, but rather imposed several illegal charges.

xv. The respondent increased the super area of the unit without increasing carpet area of the project and they revised building plan without consent from buyers as per DTCP and HARERA Norms, builder should require 2/3 buyers' prior consent.

xvi. Furthermore, the respondent company also sent an indemnity cum undertaking for the complainant to sign, which relieves the respondent company from all its liabilities which is totally one-sided, illegal & arbitrary.

xvii. That the complainant thereafter objected to the illegal demands of the respondent but the respondent did not pay any heed to it and kept on threatening the complainant of cancelling her allotment.

xviii. The respondent despite having made multiple tall representations to the complainants, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the cheated allottees.

xix. That the respondent with the malafide intention to usurp the hard-earned monies of the complainant, sent a cancellation letter dated 05.02.2022, terminating the allotment of the complainant and further denying any refund which is totally illegal and unjustified.

xx. That complainant tried to contact the respondent raising various issues in relation to the said unit and asking the reason for delay in completing the construction of the project and time line within which possession will be handed over to the complainants and challenging the various illegal and one-sided demands letters sent to the complainant but respondent till date has failed to provide any satisfactory response to the complainant.

xxi. That the respondent had illegal and unjustified demand towards VAT intimidation attempt to coerce and obtain an illegal and unfounded claim amount.

xxii. The respondent charged extra development charges @ Rs. 462/- per square feet calculated on super built-up area these charges calculated on the basis of carpet area as per form A to H submitted by the respondent in RERA authority at the time of project registration carpet area of the flat is 185.62 Sq. mt.

xxiii. The respondent quashes the cost of increase in super area without increasing carpet area of the unit.

xxiv. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainant has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered in dark as the planning with which the complainant invested her hard-earned monies have resulted in sub-zero results and borne thorns instead of bearing fruits.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):

i. Pass an order for delay interest on paid amount of Rs. 97,61,195/- till actual possession thereon at the prescribe rate of interest.

ii. To take strict actions against the Respondent Company for violation of Section 13 of the Act, by not executing any Agreement to sell in favour of the Complainant.

iii. To Constitute a High-End Committee to analyse the issues of illegal demands like Escalation cost, increase in super area, Electrification, STP, PBC, charges, Taxes, I and Advance Maintenance charges, imposed by the Respondents.

iv. To quash the cost of increase in super area without increasing carpet area of the unit.

v. To direct the respondent to quash the Club Membership Charges Rs. 2.00.000/-.

vi. To direct the respondent to quash the Fire Fighting Charges, Electricity Connection Charges, and Installation Charges and STP @ Rs. 100/- per square feet calculated on the Super Build Up area.

vii. To direct the respondents to quash the Escalation cost of Rs. 437/-per Sq. Ft.

viii. To direct the respondents to quash the Holding Charges.

ix. To direct the respondent to pay interest on maintenance security.

x. To Pass an order the respondents shall be charged GST according to the same rate as the rate before the implementation of GST because GST was implemented on July 2017 and due date of possession was before 2017.

D. Reply filed by the respondents.

5. The respondents have contested the complaint on the following grounds:

i. That the Complainant has not come before this Hon'ble Authority with clean hands and have suppressed vital and material facts from this Hon'ble Authority. The correct facts are set out in the succeeding paras of the present reply.

ii. At the outset, it is most humbly submitted before this Ld. Authority that the Respondent No. 2 is not a proper party to the present matter and the name of the Respondent No. 2 may kindly be deleted from the array of party. It is imperative to note that the Complainant was in direct contact with the Respondent No. 1 and no correspondence or any dispute of the Complainant in the present complaint pertains to the Respondent No. 2. Moreover, no specific relief has been sought by the Respondent No. 2 and hence the name of the Respondent No. 2 may kindly be deleted from the array of parties. The Respondent No. 2 is neither a necessary nor a proper party in the present matter.

iii. That the Complainant being interested in the group housing real estate development of the Respondents, known under the name and style of "TERRA" located at Sector 37-D, Gurugram, Haryana booked a unit in the said Project. At the very outset, it is pertinent to mention that the Project has all the necessary approvals and permissions. It was granted license no. 83 of 2008 and 94 of 2011 from Director, Town and Country Planning, Haryana and is also registered with the Hon'ble Authority vide Registration no. 299 of 2017 dated 13.10.2017.

iv. That the Complainant booked a unit vide an application form dated 12.08.2012 by paying a booking amount of Rs. 6,00,000/-dated 23.07.2012.

v. That subsequent to such booking, a unit bearing number T20-1004, Tower 20, tentatively admeasuring 1691 sq. ft. was allotted to the Complainant vide Allotment Letter dated 07.12.2012.

vi. It is submitted that prior to approaching the Respondents, the Complainant had conducted extensive and independent enquiries with regards to the project and only after being completely satisfied with regards to all aspects of the Project, the Complainant took an

independent and informed decision to purchase the unit, un-influenced in any manner by the Respondents.

vii. That the Complainant consciously and wilfully opted for Construction Linked Payment Plan as per their choice for remittance of the sale consideration for the unit in question. That the Respondents had no reason to suspect bonafide of the Complainant.

viii. That after the allotment of the unit in favour of the Complainant, two copies of the Builder Buyer Agreement were duly sent to the Complainant via speed post on 30.11.2012 and the same was duly communicated to the Complainant. Reminder for the execution of the same were also sent via email.

ix. That it is respectfully submitted that due to failure of the Complainant to execute the Builder Buyer Agreement, the rights and obligations of the Parties are completely and entirely determined by the covenants incorporated in the Application Form and Allotment Letter which continue to be binding upon the parties thereto with full force and effect.

x. That both the parties were obligated to fulfil their respective obligations as set out under the Application Form and Allotment Letter. The due date of offer of possession, as per clause G(1) of the Application Form dated 12.08.2012 was 42 months from the date of sanction of the Building Plan or execution of Flat Buyer's Agreement, whichever is later with a grace period of 180 days, subject however, to the force majeure circumstances, intervention of statutory authorities and the purchaser making all payments within the stipulated period and complying with the terms and conditions of this agreement.

xi. That as the Complainant failed to execute the Builder Buyer Agreement, the due date shall be commutated from the date of Approval of Building

Plan, i.e., 21.09.2012. Thus, the proposed due date for offer of possession comes out to be 21.10.2016.

xii. It is imperative to mention here that the due date of delivery of the unit was subjective in nature and was dependent on the force majeure circumstances and the Purchaser/allottee complying with all the terms and conditions of the Application Form and Allotment Letter along with timely payments of instalments of sale consideration.

xiii. At this stage, it is categorical to note that Respondents was 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.

xiv. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping

all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country Therefore, it is safely concluded that the said delay in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.

xv. Furthermore, it needs to be seen that the development of the Unit and the Project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the Complainant, which, the Complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the Complainant have delayed the payment against the Unit. That the total sales consideration of the unit was Rs. 1,30,75,745.42/-out of which the Complainant had/have only made payment of Rs. 97,61,195/-

xvi. That it was the obligation of the Complainant to make the payments as per the adopted payment plan and agreed terms and conditions of the Application Form and Allotment Letter. That the timely payment of the sales consideration of the unit was the essence of the allotment.

xvii. It is submitted that demand letters were raised as per the agreed payment plan however, the Complainant had continuously delayed in making the due payments, upon which, various payment request letters

and reminder notices were also served to the Complainant from time to time. That the bonafide of the Respondents is also essential to be highlighted at this instance, who had served request letters at every stage and reminder notice -payment in case of non-payment

xviii. At this stage, it is pertinent to note that all the demands raised by the Respondent No.1 were as per the agreed terms and conditions of the Application Form and Allotment Letter executed between the parties. That upon the non-payment by the Complainant, the Complainant was considered under default, and upon the failure of the Complainants to rectify their default, the Respondent was left with no other option but to terminate the unit of the Complainant.

xix. That, it is evident from the above-mentioned submissions that the Complainant stood in the event of default for not making payment of outstanding and statutory dues. Accordingly, the Respondent no.1 had a right to terminate the Unit. That multiple opportunities were given to the Complainant to rectify their default through the reminder notices and final demand notice for payment of outstanding amount, however, the Complainant again willingly and voluntarily chose to not rectify the same, and consequently, after waiting for an ample period of time, the Respondent no.1 was constrained to terminate the allotment of the unit of the Complainant by issuing the termination letter dated 10.12.2019 and 03.12.2021.

xx. That accordingly, after termination of the allotment of the unit of the Complainant, the Complainant was left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the Complainant, solely due to the default of the Complainant, the Respondents is well within their right to forfeit the earnest amount along the delayed payment interest till the date of

termination and other non-refundable amount including brokerage charges, processing fees, any monetary benefit given to the purchaser and the statutory dues paid against the unit.

xxi. That the right of the Respondent no.1 to validly cancel /terminate the Unit arises from the Model RERA Agreement which recognizes the default of the allottee and the forfeiture of the interest on the delayed payments upon cancellation of the unit in case of default of the allottee.

xxii. At this stage, the Bonafide of the Respondent No. 1 is imperative to note that even after the lawful cancellation of the unit of the Complainant, the Respondent No. 1 again provide a final opportunity to the Complainant to pay the outstanding dues. That after the completion of the construction of the unit and upon receipt of the Occupation Certificate dated 09.12.2021, the Respondent No. 1 issued a valid offer of possession dated 20.12.2021 in favour of the Complainant and requested to remit the outstanding dues and take the possession of the unit.

xxiii. That without prejudice to the above-noted contentions of the Respondents, it is most humbly submitted before this Ld. Authority that the super area of the unit was tentative in nature and the same was agreed between the parties at the time of execution of the Application Form. That as per Clause D of the Application Form dated 12.08.2012, the super area of the unit was tentative in nature and was subject to change as per the construction of the Project and the was to be finally determined after the receipt of the Occupation Certificate.

xxiv. That all the amounts demanded by the Respondent was in accordance with the aforementioned agreed terms and conditions. That even after providing one last opportunity to the Complainant in order to clear the outstanding dues and take the possession of the unit, the Complainant

again failed to abide by the terms and conditions of the Application Form and the Allotment Letter and remit the outstanding dues. That due to the failure of the Complainant in remitting the outstanding dues, the unit of the Complainant was again terminated vide Termination Letter dated 05.02.2022.

xxv. That after the said Termination, the Respondent contacted the Complainant vide email dated 13.12.2023 and requested to collect the refund amount cheques from the office of the Respondent No. 1 but the Complainant failed to do so. That the Respondents have been willing to refund the amount post forfeiture of earnest money, however, it is the Complainant who has failed to come forward to take the same. That in such a circumstance, no liability of the Respondent for the payment of interest of the can exist.

xxvi. That even after such bonafide and generous conduct of the Respondents, the Complainant failed to abide by the terms and condition of the Application Form and Allotment Letter till date and remit the outstanding dues.

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

E. Jurisdiction of the authority

7. 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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

> ***Section 11***
> .....
> *(4) 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(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act of 2016 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 the objections raised by the respondents:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

11. The respondent raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution Control Board, Hon'ble Supreme

Court prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.

12. In the present matter, the allotment letter was executed between the parties on 07.12.2012. Therefore, the due date of handing over of possession is taken from the clause G of the agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 21.09.2016. The events such as the orders of the National Green Tribunal, Hon'ble Environment Pollution (Prevention and Control Authority), Haryana State Pollution Control Board, Hon'ble Supreme Court prohibiting construction in and around Delhi among others were for a shorter duration of time and were not continuous as there is a delay of around five years and even happening after due date of handing over of possession. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter-respondents cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

13. As far as delay in construction due to outbreak of Covid-19 is concerned, **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 I. As 3696-3697/2020 dated 29.05.2020 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."*

14. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 21.09.2016 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to orders of court and the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that 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 and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to deliver the physical possession of the unit along with delay possession charges.

15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

> *"**Section 18: - Return of amount and compensation***
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

16. Clause G of the provisional allotment letter provides for time period for handing over of possession and is reproduced below:

> ***Clause G POSSESSION AND HOLDING CHARGES***
> *subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s)having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges,* ***the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser's within a period of 42***

months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.
The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.

17. The complainant submit that she was allotted a unit bearing no. T20-1004 vide allotment letter dated 07.12.2012 under possession linked payment plan. Thereafter, complainant paid an amount of Rs.97,61,195/- against the total sale consideration of Rs. 1,30,75,745/-. As per clause G of the provisional allotment letter the respondent was required to handover possession of the unit within a period of 42 months from the date of sanction of building plan or execution of agreement, whichever is later. The due date of possession comes out to be 21.03.2016[calculated from the date of sanction of building plan in absence of date of builder buyer agreement]. Further the respondent is entitled a grace period of 180 days. As far as grace period is concerned, the same is allowed. Therefore, the due date of handing over of possession was 21.09.2016.

18. The respondent submitted that the complainant is defaulter and have failed to make payment as per the agreed payment plan. The respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 09.12.2021 and thereafter, has offered the possession on 20.12.2021. The respondent has issued various reminder cum demand letters to the complainant and requested to pay the outstanding dues, but the complainant has failed to pay the same. Due to non-payment of the outstanding dues, the respondent has cancelled the unit vide letter dated 05.02.2022. Accordingly, the complainant failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the Authority is whether cancellation vide letter dated 05.02.2022 is valid in the eyes of law or not?

19. On consideration of the circumstances, the documents placed on record and submissions made by the parties, the Authority observes that the complainant was allotted the subject unit vide allotment letter dated 10.12.2012. As per possession clause G of provisional allotment letter, the possession of the unit was to be delivered to the complainant by 21.09.2016 including grace period of 6 months on account of force majeure circumstances. She has paid an amount of Rs.97,61,195/- against the sale consideration of Rs. 1,30,75,745/- agreed at time of buyer's agreement which is more than 100% of the consideration.

20. Further, the counsels of the complainant states that letter of offer of possession given by the respondent is not a valid offer of possession. Various reasons have been put forth by the counsels for the complainant as the respondent has demanded additional demands at the time of offer of possession which are not the part of the builder buyer's agreement, etc. Therefore, at this stage, the authority clarifies the concept of 'valid offer of possession'. It is necessary to clarify this because after valid and lawful offer of possession, liability of promoter for delayed 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 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 occupation certificate-** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructure facilities have been laid and are operational. Such

infrastructure facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

ii. **The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 60 days after completing prescribed formalities. Further, the promoter shall provide the unit to the allottees as per the specification agreed at the time of execution of BBA. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects, which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of an apartment with such minor defects under protest.

iii. **Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. The Authority is of the view that the respondent is under obligation to raise demand as per the terms and conditions of the builder buyer agreement executed inter se parties and the respondent is directed not to charges anything which is not part of the BBA.

21. The authority observes that the primary condition of valid offer of possession has not been fulfilled by the respondent as it failed to offer possession of the subject unit to the complainant after the receipt of

occupation certificate by the competent authority. The respondent is contending that the occupation certificate was obtained on 09.12.2021 and thereafter, possession was offered to the complainant on 20.12.2021. Upon perusal of the document bearing Memo No. ZP-437-Vol.-III/AD(RA)/2021/31083 dated 09.12.2021, it is observed that the said document was issued by the concerned department in principle for the purpose of inviting objection/suggestion for construction of the 152 units (22 no's extra units) Tower 20 & 21 and Tower 24 & 25 instead of sanctioned 141 no's units, without approval of building plans and the same was also accompanied with certain conditions. Further, it is also specifically stated in the concluding para of the said letter dated 09.12.2021 that *"Thereafter, "Final" approval of the "Provisional" occupation along with sanction letter (BR-VII) will be conveyed after examination of the objections, if any received in this regard from the General Public/existing Allottees within 30 days after issuance of communication as and when issued by you."* Thus, it is concluded that the letter dated 09.12.2021 is not occupation certificate issued by the concerned department under "Form BR-VII" under Code 4.10 of Haryana Building Code, 2017. Moreover, the occupation certificate was issued by the concerned department on 24.08.2022 in respect of the tower where the unit of the complainant is situated. In short, the respondent offered the possession to the complainant without obtaining occupation certificate. Accordingly, the offer of possession vide letter dated 20.12.2021 cannot be termed as valid offer of possession in absence of occupation certificate and demands raised vide the said letter are also set-aside for the aforesaid reason. In view of the above, the authority is of the opinion that cancellation letter dated 05.02.2022 is invalid and is hereby set aside by the authority being bad in eyes of law. The respondent is directed to re

instate the allotted unit of the complainant as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainant within a period of 60 days from the date of this order.

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

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

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

24. 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., 21.11.2025 is 10.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

25. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. 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 the complainant in case of delayed possession charges.

27. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date. By virtue of clause G of the provisional allotment letter executed between the parties on 12.08.2012, the possession of the subject flat was to be delivered within a period of 42 months from the date of sanction of building plans or date of execution of buyer's agreement, whichever is later. For the reason above, the due date of possession is to be calculated from the date of sanction of building plan 21.09.2012 in the absence of date of flat buyer agreement and as far as grace period of 180 days is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 21.09.2016. However, the

respondent has failed to handover possession of the subject unit to the complainant after obtaining occupation certificate on 24.08.2022. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant/allottee shall be paid, by the promoter, delayed possession charges against the paid-up amount at the prescribed rate of interest @10.85% p.a. for every month of delay from due date of possession i.e., 21.09.2016 till 24.10.2022 i.e., date of receipt of occupation certificate (24.08.2022) plus 2 months, as per section 18(1) of the Act of 2016.

Increased super area:

29. It is contended that the respondent has increased the super area of the subject unit without giving any formal intimation, by taking any written consent from the allottee. On perusal of record, the super area of the unit was 1691 sq. ft. as per the allotment letter and it was increased by 120 sq. ft. vide letter of offer of possession, resulting in total super area of 1811 sq. ft. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the super area of the unit would be revised and increased by the respondent, and they shall pass on this benefit to the complainant/allottee as per the recommendations of the committee.

Club Membership Charges:

30. The term club membership charges have been defined under clause 1.4 and clause 3.2(a) prescribes the amount of club membership charges to be levied, which are reproduced below:

1.4 "Club Membership Charges" or "CMC" shall mean charges to be paid by the purchaser(s) to the seller or the maintenance service provider for membership of the club to be developed by the seller/confirming party. However, aforesaid charges do not include the usage charges for the club facilities, which shall always be payable extra by the purchaser(s).
3.2 in addition to the aforesaid cost of property, the purchaser(s) has undertaken and agreed to pay the following charges: -
a) club membership charges ("CMC") @ Rs. 2,00,000/- per unit.

31. The said issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed as under:

> *"...After deliberation, it was agreed upon that club membership will be optional.*
> *Provided if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of FBAs that limits CMC to INR 1,00,000.00.*
> *In view of the consensus arrived, the club membership may be made optional. The respondent may be directed to refund the CMC if any request is received from the allottee in this regard with condition that he shall abide by the above proviso."*

32. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

GST/VAT/Service Tax:

33. The allottee has also challenged the authority of the respondent builders to raised demand by way of goods and services tax. Since this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter only the

difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottee the applicable combined rate of VAT and service tax. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate (C =A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-Profiteering benefit passed if any till March 2019 (F)	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%
Amount to be refund Only if greater than (E- F) (G)	**0.36%**	**0.53%**	**2.99%**	**0.41%**	**2.99%**	**2.99%**

34. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as *Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.* passed by the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of agreement was required to be delivered on 21.09.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely

possession of the flat. The relevant portion of the judgement is reproduced below:

> *"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 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 respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."*

35. In appeal no. 21 of 2019 titled as *M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi,* Haryana Real Estate Appellate Tribunal, Chandigarh has upheld the *Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra)*. The relevant para is reproduced below:

> *"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default.* ***So, the appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."***

36. In this present complaint, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority

is of the view that the respondent/promoter were 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 flat buyer's agreements. The authority concurs with the findings of the committee 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 as detailed in para 39 of this order.

Electrification Charges:

37. In the present complaint, it was contended by the complainant that the respondent issued a letter to the complainant along with various unjust and unreasonable demands under various heads i.e. electrification charges. On the other hand, the respondent submitted that such charges have been demanded by the allottees in terms of FBA.

38. The authority concurs with the recommendation made by the committee and holds that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottee of Terra @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottee of Terra and be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottee of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

H. Directions of the authority

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

i. The cancellation letter dated 05.02.2022 is hereby set aside. The respondent is directed to re instate the allotted unit of the complainant as per BBA and if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainant within a period of 60 days from the date of this order.

ii. The respondent is directed to pay delayed possession charges against the paid-up amount at the prescribed rate of interest @10.85% p.a. for every month of delay from due date of possession i.e., 21.09.2016 till 24.10.2022 i.e., date of receipt of occupation certificate (24.08.2022) plus 2 months, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

iii. The arrears of such interest accrued from 21.09.2016 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order as per rule 16(2) of the rules.

iv. The respondent is further directed to issue a fresh statement of account after adjustment of delayed possession charges as per afore said direction at serial no. 38(ii) of this order within a period of 60 days from the date of this order. Thereafter, the complainant is directed to pay outstanding dues, if any, as per section 19(6) and (7) of the Act of 2016.

v. **GST charges**: In the present complaint, the due date of possession is prior to the date of coming into force of GST i.e. 21.09.2016. The authority is of the view that the respondent/promoter were not entitled to charge GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements 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. Also, the authority concurs with the findings of the committee 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 as detailed in para 39 of this order.

vi. **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Terra @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Terra be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly.

vii. **Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-.

viii. The respondent/promoter shall handover the physical possession of the allotted unit and execute conveyance deed in favour of the

complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.

ix. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

x. The respondent is directed to execute the builder buyer agreement within 30 days from the date of this order. The respondent is also directed not to charge anything which is not part of builder buyer's agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

40. Complaint as well as applications, if any stands disposed of accordingly.

41. File be consigned to registry.

Dated: 21.11.2025

(Arun Kumar)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram