



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	496 of 2024
Date of filing.:	09.04.2024
Date of first hearing.:	20.05.2024
Date of decision.:	22.01.2026

1. Sunil Sharma through LR's Munish Sharma and Vinayak Shandilya
2. Ms Geeta Sharma W/o Late Sh. Sunil Sharma
All r/o B-102, Ground Floor, Olive Court,
Puri Aman Villas, Sector-89, Faridabad Haryana,COMPLAINANTS

VERSUS

1.M/S BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi-110001
2.M/s Countrywide Promoters Pvt Ltd
M-11, Middle Circle, Connaught Circus,
New Delhi-110001RESPONDENTS

CORAM: **Parneet Singh Sachdev** **Chairman**
Nadim Akhtar **Member**
Dr. Geeta Rathee Singh **Member**

Present: - Ms. Aishwarya Dobhal, Counsel for complainants through VC
Mr. Hemant Saini, Counsel for the respondents.

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ORDER (PARNEET S. SACHDEV-CHAIRMAN)

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

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project.	Park -81, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	AVI-42-SF, 2067 sq. ft.
5.	Date of Allotment	16.03.2010

6.	Date of builder buyer agreement	19.06.2012
7.	Due date of possession	18.12.2015 as per complainants 22.07.2019 as per respondents
8.	Possession clause in BBA (Clause 5.1)	<p>5.1-Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to purchaser having complied with all the terms and conditions of this Agreement and not being in default under any of provisions of this Agreement including but not limited to timely payment of all complied with all provisions, formailities, documentation etc. as prescribed by the Seller/ Confirming Party. whether under this Agreement or maintenance agreement or otherwise, from time to time, the Seller/ Confirming Party proposes to handover the possession of the Floor to the purchaser for fit outs within a period of 36 months from the date of sanction of the building plan or execution of the floor buyers agreement, whichever is later. The purchaser agrees and understands that subject to Clause 14 of this agreement, the Seller/ Confirming Party shall be entitled to a grace period of 180 days, after the expiry of 36 months as stated above, for applying and obtaining the occupation certificate from the</p>



		competent authority.
9.	Total/Basic sale consideration	₹ 45,23,010/-
10.	Amount paid by complainants	₹29,26,681/-
11.	Offer of possession.	Not made till date.
12.	Cancellation letter	21.06.2016.
13.	Occupation Certificate	12.10.2021

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. That complainants under sr. no. 1 of array of parties, both sons of Late Sh. Sunil Sharma, are legal heirs of Late Sh. Sunil Sharma and Complainant no. 2 is 1st class legal heir of the principal allottee, Sh. Sunil Sharma (now deceased) and is also the original co-allottee and, hold the legal authority to file the instant complaint against the respondents. The death certificate of Late Sh. Sunil Sharma and Succession certificate are annexed as Annexure C-1(Colly).
4. That the Late husband of complainant no.2 /Principal Allottee and instant complainant as Co- Allottee, booked a residential floor admeasuring super build up area of 2067 sq.ft., constructed on plot admeasuring 500 sq yds. in the said project of the Respondents. They paid an amount of Rs. 5,00,000/- on 26-09-2009, as demanded by the respondents, against

which receipt no. 1400022739 had been issued by respondent as acknowledgement of said payment.

5. That the respondents allotted a residential Floor in the project "Independent Floors Park-81" bearing Unit no. AVE-42-SI' admeasuring super built-up area of about 2067sq. ft in the said project to the complainant vide an Allotment cum Demand Letter dated 16-03-2010. The Copy of the Allotment cum Demand Letter dated 16-03-2010 has been annexed herewith as Annexure C-2. The respondent also called upon the complainant to pay an amount of Rs. 5,07,361/- against which an amount of Rs. 5,00,000/- had been paid by the complainant.
6. That the respondent executed Floor Buyer's Agreement on 19-06-2012 vide which independent residential floor bearing no. AVE-42-SI' on 2nd floor in park 81, parklands, Faridabad admeasuring super build up area 2067 sq. ft. was agreed to be sold to the complainant by the respondents at the basic sale price of Rs. 45,23,010/- less discount of Rs. 2,26,150/-. It was promised under clause 5.1 of the agreement to deliver the possession of said unit to the complainant in 36 months from the date of execution of the said agreement plus grace period of 180 days after expiry of 36 months for applying and obtaining the occupation certificate. Hence, the due date of possession as per said agreement is 18-06-2015. After grace period of 180 days, it is 18-12-2015. However, the



respondents have not complied the terms of said agreement as the offer of possession has not been given by the respondent till date.

7. The copy of floor Buyer's Agreement dated 11-01-2012 is annexed as Annexure C-3.
8. That the respondents also issued a payments schedule plan, which mentioned the time and payment to be remitted to the respondents by the complainant.
9. That the underlying purpose of option of said plan was that the complainant would be required to pay only part of sales consideration as per agreed stages of consideration, provided that such stage wise demand should be raised by respondents upon furnished credible evidences of completing various stages of construction to the satisfaction of the complainant. The copy of the payment plan is annexed herewith as Annexure C-4,
10. That the complainant paid an amount of Rs. 17,03,382/- till 19-06-2012 i.e., more than 39% of basic sale price of the unit even before execution of any written agreement between the parties that is violation of section 13 (1) of RERA Act, 2016.
11. That the total consideration of the said floor was Rs. 42,96,860/- towards the sale price for purchase of the said flat including all the additional/miscellaneous charges and taxes against which the Complaint has paid an amount of Rs. 29,26,681/- against demands raised by the

respondent since booking, i.e., 26.09.2009. The copies of payment receipts are annexed as Annexure C- (colly).

12. That the delay of more than 11 years has been caused from the date of execution of the floor Buyer Agreement. However, the respondent is still making effort to complete the project and is even not sure about tentative date of offer of possession which proves that the respondents have not complied the terms of said agreement and are responsible for the breach of the agreement.
13. That the respondent failed to prove any updates regarding the status of construction or a tentative completion date for the project. Instead, to mask its own shortcomings, the respondent unjustly cancelled the allotment of the unit on 21.06.2016, without giving any prior intimation and that too after grabbing huge amount of money from the complainants. The copy of Cancellation Letter dated 21.06.2016 is annexed as Annexure C-6.
14. That the complainants questioned the substantial increase in the size of the unit from 2067 sq. ft. without any prior notice or consent from the complaint or other allottees. It is crucial to highlight that the demand for further payment against the unit in question was both illegal and unjustified, especially considering the delay in the completion of the project and subsequent delays in the handover of the unit.



15. That the compliant served a Legal Notice upon the respondent, requesting them to provide possession of the unit in question along with delay possession interest. Despite this, the respondent neither acknowledged nor responded to the Legal Notice. They have kept the complaint in a state of uncertainty by failing to provide any statement regarding the refund amount after cancellation or showing any willingness to offer possession of the unit. The copy of Legal Notice is annexed as Annexure C-7.
16. That the respondent as of the present date, has failed to obtain the Occupancy Certificate for the project despite lapse of more than 17 years from date of booking that is violation of section 11 (4) (b) of the RE (R&D) Act 2016. Such non-compliance may be penalized as per the provisions of the Act.
17. That complainants do not want to withdraw from the project. As per the obligations on the respondent/promoter under section 18 of the Act, 2016 read with Rules 15 and 16, 2017, the Promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complaints at the rate prescribed.

C. RELIEF SOUGHT

18. That the complainants seeks following relief and directions to the respondent:-



- i. To give necessary directions to the Respondent to hand over the possession of the allotted unit along with delay interest till date along with prescribed rate of interest as per the provisions of sec. 18 and sec. 19(4) of the RE (R&D) Act read with Rule 15;
- ii. To give necessary directions to the Respondent no. 1 and 2 as per the provisions of sec. 11(4)(a), (f), (h) and sec. 17(1) of the RE(R&D) Act to execute conveyance deed in favour of the complainants;
- iii. To impose penalty upon the respondent as per the provisions of Section 60 of RE(R&D) Act for willful default committed by them;
- iv. To impose penalty upon the respondent as per the provisions of Section 61 of RE(R&D) Act for contravention of Sec. 14 and Sec. 16 of RERA Act;
- v. To direct the respondent to provide detailed account statement against the amount collected from the complaint in lieu of interest, penalty for delayed payments under Rule 21(3) © of HRERA Rules, 2017;
- vi. To issue directions to make liable every officer concerned i.e., Director, Manager, Secretary, or any other officer of the respondent company at whose instance, acquiescence,



neglect any of the offences has been committed has been committed as mentioned in Sec. 69 of RERA Act, 2016 to the read with RERA Rules, 2017;

- vii. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section-420,406 and 409 of the Indian Penal Code;
- viii. To issue direction to pay the cost of litigation;
- ix. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

Learned counsel for the respondents filed detailed reply on 21.10.2024 pleading therein:

19. That the Late Mr. Shashi Sharma and Mrs. Geeta Sharma, being interested in the project being developed by Respondent no. 1, expressed their interest and willingness to purchase a unit in the project of the project of the Respondent no.1 known under the name and styles of "Park 81". Accordingly, an application form was executed by them in order to purchase a unit in the afore-mentioned project of the Respondent no.1. That an inaugural discount of Rs. 2,26,150/- was given to the



Complainants by the Respondent No. 1. A copy of the Application form is annexed as Annexure R1.


20. That pursuant thereof, the Complainants were allotted an independent floor bearing no. 81-AVI-42-SI' admeasuring tentatively area measuring 2067sq. ft. (hereinafter referred to as the "unit") vide the Allotment letter dated 16.03.2010. A copy of the Allotment letter dated 16.03.2010 is annexed as Annexure R2.
21. That thereafter, the parties mutually, willingly and voluntarily entered into a floor Buyer's Agreement on 19.06.2012 (the "FBA"). That the relationship between the parties was purely contractual and flowed from the explicitly agreed terms and conditions of the FBA. A copy of the floor Buyer's Agreement dated 19.06.2012 is annexed as Annexure R3.
22. That the Respondent no.2 is a mere confirming party to be FBA and is neither a proper nor a necessary party. No relief has been sought against respondent no. 2 under the Complaint and hence, the name of Respondent no.2 should be deleted from the array of parties.
23. That as per the FBA, Clause 5.1, the due date of possession was proposed to be 36 months from the date of sanctioning of the building plan or execution of the FBA, whichever is later with a grace period of 180 days. That the benefit of grace to be given has also been considered by the I.d. Tribunal, Chandigarh in the case titled Emaar MGF Land Ltd. Vs Laddi



praramjit singh Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed.

24. That the building plans were sanctioned on 22.01.2016, hence, computing the subjective due date comes out to be 22.07.2019. However, this due date was subject to the incidence of force majeure circumstances and the timely payment by the Complainants, the benefit of which is bound to be given to the Respondents under Clause 1.14 of the FBA.

25. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the framing of modern mineral concession rules. Reference in this regard may be taken from the judgment of Deepak Kumar v. State of Haryana, (2012) 4 SCC 629, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials, including sand, which was an important raw material for the development of the said project became scarce. The Respondent no. 1 was faced with certain other force majeure events including but not limited to the 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 constructions and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.



26. That additionally, even before 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 laborers, 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-IDM-1(A) recognized that India was threatened with the spread of the COVID-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on March 25, 2020.
27. That during the period from 12.04.2021 to 24.07.2021 (102 days), 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.
28. That the Complainants have gravely defaulted in timely remittance of installments against their unit as evident from the Annexure- C, payment plan-Construction Linked plan opted by complainants. That the last payment made by the Complainants was on 21.02.2015 at the stage of "casting of ground floor slab" and thereafter no payments were made by the Complainants. That this makes it ex facie evident that the



Complainants have themselves been in default for the last 9 year, and have now approached this L.d. Authority, only to seek wrongful gain.

29. That a similar obligation to make the payment against the Unit and the payment of interest in case of non-payment is also as per the Real Estate (Regulation and Development) Act, 2016, under sections 19(6) and 19(7).

30. That the Complainants stood in the event of default for not making payment. That upon delay being caused by the Complainants on payment of different installments, they were served with various payment Reminders. That the last payment made by the Complainants was on 21.02.2015. That thereafter no payment was made by the Complainants despite service of various demands and reminders thereon. That vide letter dated 09.11.2015, the last and final opportunity was given to the Complainants to make payment of the outstanding dues in respect of the unit within 15 days failing which the Respondent shall have the right to terminate/cancel the allotment of the unit of the Complainants. That it is was especially noted that "*.... we hereby provide you this last and final opportunity to ensure immediate compliance with the terms of the agreements and the Reminders and to immediately clear you entire outstanding amount of Rs.12,52,471/- along with accumulated interest @18% p.a. till the date of payment no later than 15 days from the date of this notice*". However the Complainants failed to clear the outstanding dues even after adequate notice.



31. That the respondent had a right to terminate the Unit as per clause 7.1 of the FBA. That after giving multiple opportunities to the complainants to rectify their default, the Complainants again willingly and voluntarily chose to not rectify the same, and consequently, the respondent terminated the unit by issuing the Termination letter on 21.06.2016. A copy of the termination letter dated 21.06.2016 is annexed as Annexure R6.
32. That as noted above, the termination of the unit was effected on 21.06.2016, i.e., prior to the implementation of the RERA Act, 2016 or the RERA Rules, 2017 and no right of the parties remained thereafter. The relationship between the parties was concluded on such date and no amount remained payable by either to the other.
33. That it is established principle of law that the law assists those who are vigilant to protect their rights. The Doctrine of Delay and Laches provides that all claims should be brought before the respective courts/forums within reasonable time frame and no litigant who approached court/forum belatedly without any justifiable explanation should be allowed to seek benefit of his negligence, similar genesis flows from the provisions of Limitation Act, 1963.
34. That after such termination of the unit of the Complainants vide termination letter dated 21.06.2016, no cause of action remains. That the present complaint is filed on 27.03.2024 (date of proforma-B). The



present complaint has been filed after a delay of 7 years 9 months and 7 days. That the present Complaint being grossly barred by limitation, should be dismissed.

35. That without prejudice to the aforementioned, it is most vehemently submitted that the allotment of the unit of the Complainants was canceled legally and validly as per the agreed terms and conditions of the FBA, and Respondent No. 1 is entitled to forfeit the earnest money, i.e. 25% of the total sales consideration and other charges including the last payment charges and interest deposited by the allottee and other non-refundable charges including the brokerage.
36. That the cancellation of the unit was before the RERA Act hence, the earnest money shall also be as per the clause of the Buyer's Agreement which was in force prior to the termination of the Unit and the RERA Act. In the present case the earnest money was 25% of the total consideration charges, which was willingly and voluntarily agreed between the Parties.
37. That it is essential to state at this instance that the Respondents had validly completed the construction of the project and had obtained the Occupation Certificate on 12.10.2021. A copy of the Occupation Certificate dated 12.10.2021 is annexed as Annexure R7.
38. Respondents had placed on record additional documents in registry on 22.08.2025. It is stated that multiple reminder notices were issued to the



complainant, which were subsequently followed by the termination of the unit. Details pertaining to the same are mentioned below:-

Sr. No.	Document	Date
1.	Demand letter	21.12.2009
2.	Payment request	02.02.2015
3.	Reminder Notice 1	18.02.2015
4.	Reminder Notice 2	04.09.2015
5.	Reminder Notice 3	05.10.2015
6.	Payment request	19.10.2015
7.	Final demand	09.11.2015
8.	Termination	21.06.2016

That the respondent can offer refund to the complainant only upon completion of the death case formalities, including substitution of name in the present complaint.

E. ARGUMENTS OF COUNSEL FOR COMPLAINANTS AND RESPONDENTS

39.1.d. counsel for complainants submitted that complainants had purchased the unit by way of builder buyer agreement executed on 19.05.2012. Till filing of present complaint (2024), an amount of Rs 29,26,681/- stands paid to respondents. The delivery date was due in year 2015 but respondents did not complete the construction on time. As such offer of possession was not made. Rather, cancellation letter was issued on 21.06.2016. Firstly said letter was never served upon us in the year 2016.

Secondly, complainants came to know about such cancellation in year 2021 only when they approached the builder in order to enquire about offer of possession. At that time possession were offered to similarly placed neighbor allottees but not to them. It was only then they came to know about issue of cancellation. As a layman, they first visited the offices of respondent but in vain. Then legal notice dated 2022 was issued to respondents. Multiple visits were made but respondents did not pay any heed. Since, respondents are in receipt of paid amount till date, the complainants are pressing upon possession of unit alongwith delay interest.

40. In rebuttal, Id. counsel for respondent stated that for a good number of 8 years what had prevented the allottee to approach this Authority. This is a perfect case of speculative buyers. As soon the market rates gets increased the allottees approaches Authority for possession immediately/urgent basis. Herein, allottees claim is time barred duly affected by doctrine of delay and laches. He referred to Section 19(6) whereby the word used is 'Shall', the allottee is duty bound to comply with terms and conditions of agreement. Complainants herein have not made any payment after year 2015 despite issuance of several reminders dated 18.02.2015, 04.09.2015, 09.11.2015. Further, he stated that complainants in year 2015-2016 washed off their hands from the responsibility of complying with agreement. They waited till 2024 as they

were facing financial difficulties. Now, they have arrangement of funds so they are protesting the claim for possession. Moreover, in respect of denying of receipt of termination letter, he stated that said notice is duly annexed by complainants as Annexure C-6. As on date, complainants are only liable for refund of amount which needs separate adjudication. He also objected to prayer clause stating that there is no prayer for quashing of termination letter.

41. At this stage, a query was posed to complainant's counsel as to what steps were taken by them between the year 2015-2021 to retain allotment of unit.

42. To this, it is stated that personal difficulties of a litigant family needs to be touched to reply the query. In early months of year 2013, business partition took place among family of litigant. Then due to certain ailment father, one of allottee got expired on 18.08.2013. Then family after gaining strength took active participation and visited office of respondent only in year 2021 when they came to know that other allottees are offered possession of their unit. Their issue of cancellation came into knowledge and accordingly, complainants reacted by issuing legal notice in year 2022.



G. ISSUES FOR ADJUDICATION

43. Whether the complainants are entitled to the relief sought or not? If yes, the quantum thereof.

H. OBSERVATIONS OF THE AUTHORITY

44. Factual matrix of the case is that a unit no. 81-AVI-42-SI having an area of 2067 sq. ft. was allotted in the project-'Park -81' being developed by the respondents situated at Faridabad, vide allotment letter dated 16.03.2010. A builder buyer agreement was executed between both the parties on 19.06.2012 and as per clause 5.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date of sanction of building plan or date of agreement, whichever is later. As per complainant's version, the deemed date of possession is 18.12.2015. But as per respondent, the date of approval of building plans is 22.01.2016, thus deemed date of possession works out to 22.07.2019. Complainants as on 21.02.2015, had paid an amount of Rs 29,26,681/- against basic sale price of Rs 45,23,010/-.

45. Respondent no. 1 in its written reply has admitted the fact pertaining to allotment, execution of agreement and receipt of paid amount. He objected to the complaint by stating that present complaint pertains to a unit located in real estate Project "Park -81" being developed by the Respondent No. 1 only. The Respondent No. 2 is a mere confirming party to the Agreement and no relief has been claimed from the Respondent No. 2. Hence, its name should be deleted

from the array of parties. Further, it has been stated that unit stands terminated vide termination letter dated 21.06.2016 after issuing reminders dated 18.02.2015, 04.09.2015, 05.10.2015 and 09.11.2015. Complainants have approached the Authority after a gap of around 8 years, so claim of complainants for possession is hopelessly time barred.

46. Perusal of facts and submissions reveals that complainants have paid all amounts and carried out transactions with respondent no. 1 only. However, in builder buyer agreement the obligation of delivering possession to complainants was imposed upon both the respondents, i.e. Seller (BPITP) and Confirming Party (Countrywide promoters) vide clause 5.1 of builder buyer agreement which is as follows:-

Clause 5.1 in agreement

Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to purchaser having complied with all the terms and conditions of this Agreement and not being in default under any of provisions of this Agreement including but not limited to timely payment of all complied with all provisions, formalities, documentation etc. as prescribed by the Seller/ Confirming Party, whether under this Agreement or maintenance agreement or otherwise, from time to time, the Seller/ Confirming Party proposes to handover the possession of the Floor to the purchaser for fit outs within a period of 36 months from the date of sanction of the building plan or execution of the floor buyers agreement, whichever is later. The purchaser agrees and understands that subject to Clause 14 of this agreement, the Seller/ Confirming Party shall be entitled to a grace period of 180 days, after the expiry of 36 months as stated above, for



applying and obtaining the occupation certificate from the competent authority.

Keeping in view the foresaid clause, the request of respondent deleting name of respondent no. 2 is rejected.

47. Grievance of the complainants herein is that respondent had cancelled the allotment of unit despite receipt of an amount of Rs 29 lakhs, which till date is lying with respondents only. Cancellation was carried out in year 2016 without even serving upon the termination letter. Moreover, respondents were liable to deliver possession by the year 2015 only. So, cancellation in year 2016 itself is not valid. It is the stand of respondent that complainants themselves were not keen to make payments on time and due to their continuous defaults, the allotment of unit was terminated.

48. After considering submissions of both parties, Authority is of view that relevant provisions of agreement dated 19.06.2012 alongwith payment plan opted by complainants needs to be examined which are as follows:-

Clause 2.9 of agreement

*In case, the Purchaser(s) has opted for a construction linked Payment Plan (Annexure C), the Seller/Confirming Party shall send call/demand notices for payment of installments **on achieving the respective stages of construction**. The call/demand notices shall be sent by either Speed Post or Courier or email, at the discretion of the Seller/Confirming Party. In case of the same being sent by Speed Post or Courier, they shall be deemed to have been received by the Purchaser(s) within 05 days of dispatch by the Seller/Confirming Party. In case of email, the call / demand notice shall be deemed to have been delivered on the same day. The Purchaser(s) shall be liable to make payment of the amount within the time prescribed in the demand Notice.*

Clause 7.1 of agreement-Termination, Cancellation and Forfeiture:

That the timely payment of each installment of the total sale consideration i.e. Basic Sale Price and other charges as stated herein is the essence of this transaction/ agreement. In case payment of any installment as may be specified is delayed, then the Purchaser(s) shall pay interest on the amount due @ 18% p.a. compounded at the time of every succeeding installment or three months, whichever is earlier. However, if the Purchaser(s) fails to pay any of the installments with interest within three (3) months from the due date of the outstanding amount, the Seller/Confirming Party may at its sole option forfeit the amount of Earnest Money and other charges including late payment charges and interest deposited by the Purchaser (s), and any other amount of a non-refundable nature including brokerage charges paid by the Seller/Confirming Party to the broker in case the booking is done through a broker and in such an event the Allotment shall stand cancelled and the Purchaser (s) shall be left with no right, lien or interest on the said Floor and the Seller/Confirming Party shall have the right to sell the said Floor to any other person. Further the Seller/Confirming Party shall also be entitled to terminate/cancel this allotment in the event of defaults of any terms and conditions of this Agreement.

49. Payment plan opted-Construction Linked Plan in reference to payments made therein is mentioned below for reference:-

Sr. No.	Installments as per plan	Demand raised	Receipt date (payments made by Bank)
1.	Booking Amount -5 lacs for 500 sq. yd	-----	Paid Rs 5 lacs on 26.09.2015
2.	Within 90 days of booking-Complete 20% of BSP	21.12.2009 for Rs 5 lacs	Paid Rs 5 lacs on 05.01.2010.
3.	Within 150 days of booking-10% of BSP+20% of PLC+ EDC&IDC	16.03.2010 for Rs 5,07,361/-	Paid Rs 5 lacs on 26.04.2010
4.	At the start of construction-	Demand letter not	Paid Rs 1 lacs on

	10% of BSP+20% of PLC+ EDC&IDC	on record.	EEDC on 19.06.2012, Paid Rs 6,08,315/- on 01.04.2013.
5.	On casting of ground floor slab-10% of BSP+20% of PLC+ EDC&IDC	02.02.2015 for Rs 6,08,314/-	Paid Rs 6,08,315/- on 21.02.2015. Reminder dated 18.02.2015.
6.	On casting of first floor slab-10% of BSP+20% of PLC+ EDC&IDC	Demand letter not on record.	Not paid. As no payment after 21.02.2015. However, installment must be for Rs 6,08,315/-.
7.	On casting of second floor slab-10% of BSP+20% of PLC+ EDC&IDC	19.10.2015 for Rs 6,12,050/- plus previous outstanding dues (casting of first floor slab) totalling for Rs 12,47,038/-	Not paid. Final demand notice dated 09.11.2015. Termination dated 21.06.2016.
8.	On start of brickwork-10% of BSP+30% of CMC	-----	-----
9.	On start of flooring-10% of BSP+30% of CMC	-----	-----
10.	On offer of possession-10% of BSP+40% of CMC +100% IFMS.	-----	-----

50. Aforesaid table clearly provides that complainants had duly honored the demands upto stage of casting of ground floor slab by making payment of Rs 6,08,315/- on 21.02.2015. Thereafter, respondents must have raised (presumption is drawn as amount of Rs 6,08,315/- became due on account of casting of first floor slab) demand on account of first floor slab, which was not honored by complainants. Accordingly, demand was raised by respondents on 19.10.2015 on account of casting of second floor slab, which was also not



honored by complainants. Hence, termination was carried out by respondents on 21.06.2016 after issuing final demand notice on 09.11.2015.

51. It is pertinent to mention here that as on October, 2015 the respondents had achieved the stage of casting of second floor slab. As per clause, 2.9 of agreement, the installment was raised only when the stage stands achieved. Here, it is not the case of complainants that respondents without achieving the stage mentioned in demand letters, had asked the complainants to pay the amount. Nor it has been pleaded that demand letters were not in consonance with the payment plan-construction linked payment plan. In these circumstances, even if we take deemed date of possession as 18.12.2015, it is evident from demand letters that respondents were getting the unit of complainants constructed by utilizing the amounts paid by complainants. Had it been the case that complainants could have honored the demand letters, the date of handing over of possession could have been achieved by year 2016 or 2017. Moreover, the interest of complainants were secured, in case of delay, the respondents were liable to pay interest in shape of delay interest.

52. Complainants neither in their pleadings nor at time arguments have been able to justify the act of not making the payment in terms of demand letters raised after year 2015. In respect of plea of complainants that termination letter was not served upon them, it is to mention here that all demand letters and termination notice bears same address of allottees. Some of the demand letters were honored but termination notice was not received does not makes any



sense. If we look at the case from another angle, it is still hard to believe that a person who had paid an amount of Rs 29 lakhs were not in contact with the respondents between year 2015 and 2021, i.e. for good number of 6 years. Hence, plea of non-receipt of termination letter dated 21.06.2016 does not seem justified and is therefore rejected.

53. After issuance of termination letter in year 2016, the complainants choose to remain silent till filing of this complaint on 09.04.2024, i.e. complainants for 8 years did not act upon for their claims/rights. The complainants after availing a cooling off period had chosen to not pursue the allotment qua the unit in question for reasons best known to them. The act and conduct of the complainants do not match with their pleas. The terms of agreement, if any, between the parties ended after the complainants had accepted the fate of cancellation of unit. Thus, the complainants cannot now lay claim over the possession of the unit in question after abandoning the same and sitting over for more than 7-8 years.

54. The Hon'ble Supreme Court in *Newtech Promoters and Developers Pvt. Ltd. v. State of Uttar Pradesh*, (2021) 13 SCC 1, has affirmed that RERA does not dilute the binding nature of contractual obligations and that allottees remain bound by agreed payment terms unless statutory violations by the promoter are established.

55. The factual matrix further establishes continuous default, of not making payments within specified time, and failure to cure the breach despite multiple



opportunities and extensions. The respondents exercised termination strictly in accordance with Clause 7.1 of the Agreement. The Supreme Court in *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136, underscored that contractual consequences flowing from a demonstrable breach cannot be interfered with where default is proven and attributable to the defaulting party.

56. While the Real Estate (Regulation and Development) Act, 2016 is a welfare legislation enacted to safeguard the interests of homebuyers, it does not extinguish the doctrine of sanctity of contract. RERA seeks to balance consumer protection with commercial certainty. The regulatory framework does not permit an allottee to retain contractual benefits while simultaneously disregarding reciprocal obligations. Relief under RERA is intended to remedy promoter misconduct, not to immunize allottees from the consequences of contractual non-performance. Equity under RERA must operate in aid of lawful contractual compliance and cannot be invoked to reward persistent default.

57. In view of the foregoing analysis, this Authority concludes that the complainants failed to comply with the agreed payment schedule, committed repeated material breaches of the Builder Buyer Agreement, and did not establish any statutory violation or arbitrariness on the part of the respondents. Accordingly, the termination of allotment cannot be termed illegal, unjustified, or violative of the RERA Act. The prayer seeking quashing of termination and restoration of allotment is therefore rejected.



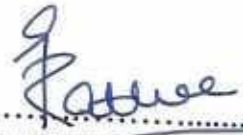
58. However, this order shall not prejudice the complainants' statutory rights, if any, to seek refund in accordance with the provisions of the RERA Act, 2016 and the terms of the Agreement. Since no specific prayer for refund has been made in the present proceedings, no direction on that aspect is being issued. The complainants shall remain at liberty to avail appropriate legal remedies in accordance with law.

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

60. In respect of relief clause (ii), (iii), (iv), (vi) and (vii) mentioned in para 18 of this order, it is clarified that said relief has neither argued nor pressed upon by the complainant's counsel at time of hearing.



61. In view of aforesaid observations, present complaint stands **Disposed of**. File be consigned to the record room after uploading of the order on the website of the Authority.



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DR. GEETA RATHEE SINGH
[MEMBER]



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NADIM AKHTAR
[MEMBER]



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PARNEET S. SACHDEV
[CHAIRMAN]

