



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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Complaint no.:	3163 of 2022
Date of filing.:	14.12.2022
First date of hearing.:	02.05.2023
Date of decision.:	16.07.2026

Kishore Kumar s/o Mr. Sobh Rajm Bhatia
R/o House No. F-16, Lajpat Nagar II,
New Delhi 110024

....COMPLAINANT

VERSUS

1. BPTP Limited
2. Countrywide Promoters Private Limited
Both having registered office at:
OT-14, 3rd Floor, Next Door Parklands, Sector-76,
Faridabad, Haryana-121004,

....RESPONDENTS

CORAM: Parneet Singh Sachdev

Chairman

Nadim Akhtar

Member

Dr. Geeta Rathee Singh

Member

Present: -

Mr. Sarthak, Proxy for Adv. Rajan Kumar Hans, Counsel for
the complainant through VC

Mr. Tejeshwar Singh, Counsel for the respondents through
VC

ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint has been filed by complainant 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 the 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.	Parklands, Phase -III, Sector 76, Faridabad
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of the unit.	Plot W-11/38 having area 252.51 sq. mtr.
5.	Date of booking	09.09.2005

6.	Date of Allotment	25.02.2008
7.	Date of floor buyer agreement	06.12.2008
8.	Possession clause in floor buyer agreement (clause 22.1)	That the possession for the said plot as proposed to be delivered seller/confirming party to the purchaser(s) within about 24 month sanctioning of the service plans of the entire colony, simultaneous execution of sale deed subject however to force majeure and purchaser(s) making all payments within the stipulated period complying with the terms and conditions of this agreement.
9.	Due date of possession	06.12.2010
10.	Basic sale consideration	₹ 22,49,900/-
11.	Amount paid by complainant	₹ 30,36,867/-
12.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the predecessor of the complainant i.e Mr. Pradeep Chaudhary had applied for a plot in the project of the respondents namely "Parklands" situated at Sector-76, Faridabad, Haryana vide application dated 09.09.2005 by paying a booking amount of ₹ 2,00,000/-.
4. In the year 2006, the original allottee could not continue with the project in question and surrendered the plot to the respondents on 25.08.2006. On

22.09.2006 the present complainant stepped into the shoes of the original allottee and the respondents acknowledged him as the allottee vide receipt no. 29360 dated 22.09.2006.

5. Thereafter, on 25.02.2008 the respondents issued an allotment letter in respect of plot bearing no. W11-38 against booking/registration of plot in Parklands, Phase III, Faridabad in favour of the present complainant. Later on, on 06.12.2008 a plot buyer agreement was executed between the parties in respect of the plot in question.
6. As per clause 22 of the agreement, possession of the unit was to be delivered within a period of 24 months from the date of sanction of service plans of the entire colony. The total sale price of the unit was fixed at ₹ 28,43,038/- against which a total amount of ₹ 30,36,867/- has been paid to the respondents.
7. Taking a period of twenty four months from the date of execution of plot buyer agreement, the respondents should have delivered possession of the plot to the complainant latest by 06.12.2010. However, the respondents have miserably failed to fulfill its obligation.
8. Complainant wrote many emails and had various verbal discussions with the staff of the respondents on many occasions but the officials of the respondent company were unable to provide clarity with regard to delivery of possession of the plot in question. The respondents have miserably failed to deliver a valid possession to the complainant within the time frame

promised as per the plot buyers agreement. Hence, the complainant is left with no other option but to approach the Authority seeking possession of the booked plot along with delay interest as per RERA Act 2016.

C. RELIEF SOUGHT

9. In view of the facts mentioned above, the complainants pray for the following reliefs):-

- i. Direct the respondents to deliver immediate possession of the plot of the complainant i.e. Plot W11-38, Parklands, Phase III Sector 76, Faridabad, Haryana or any other alternative plot upto the satisfaction of the complainant at the earliest;
- ii. Direct the respondent to pay interest at the prescribed rate as per the RERA Act, on the amount (₹ 30,36,867/-) already paid by the complainant from the due date of delivery till the date of actual possession;
- iii. Pass an order directing the respondent to provide an updated ledger statement to the complainant and this Honorable Authority.
- iv. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

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Learned counsel for the respondents filed detailed reply on 06.12.2023 pleading therein:

10. At the outset it is submitted that the name of the respondent 2 should be deleted from the array of parties. It is submitted that the project is being developed by respondent no.1, and the respondent no. 2 is just a confirming party. That all the demands are raised by respondent no.1 and all the payments have been made to respondent no.1 only, therefore the name of Respondent no. 2 should be deleted from the array of parties. It is also imperative to note that no relief has been sought against respondent no. 2 and hence, the name of respondent no. 2 should be rightly deleted from the array of parties.
11. That the original allottee approached the respondents and expressed interest in booking a plot in the residential colony developed by respondents known as "Parklands" situated in Faridabad, Haryana. Prior to the booking, allottee conducted extensive and independent enquiries with regard to the project, only after being fully satisfied on all aspects, that he took an independent and informed decision, uninfluenced in any manner by the respondents, to book the unit in question. That thereafter the original allottee vide an application form dated 29.08.2005 applied before the respondents for provisional registration of plot admeasuring 250 yards. It is pertinent to note that the booking was made by the original allottee willingly, voluntarily, and on his volition, without any influence whatsoever, from the respondents.

The original allottee requested to surrender the said unit and for transfer of the plot in favour of the complainant. The said request was duly accepted by the respondents. Thereafter, the plot was transferred from original allottee Mr. Pradeep Chaudhary to the complainant vide surrender form dated 21.08.2006. Thereafter, the respondent approved the endorsed unit to the complainant vide the endorsement approval from dated 25.08.2006.

12. That thereafter, a plot tentatively bearing no WII-38, Block No. WII in phase III admeasuring tentatively 302 sq. yds. was allotted vide letter of allotment dated 25.02.2008 to the complainant. The complainant consciously and willfully opted for a development-linked payment plan for remittance of sale consideration for the unit in question and further represented to the respondent no.1 that they shall remit every installment on time as per the payment schedule.

13. It is submitted that the complainant willfully and voluntarily accepted the nomination and after being fully satisfied with respect to, the development status of the project. Copy of letter of allotment dated 25.02.2008 is annexed as Annexure R/3.

14. Thereafter, a plot buyer's agreement dated 06.12.2008 was executed between the complainant and the respondents. It is pertinent to mention that the plot buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.

15. That both the parties were obligated to fulfil their respective obligations as set out under the plot buyer's agreement. That the due date of offer of possession, as per clause 22.1, is 24 months from the date of sanction of the service plan of the entire colony, simultaneous to the execution of sale deed however the same is subject to force majeure and purchasers making all payments within the stipulated period and complying with the terms and conditions of this agreement and the events and other circumstances beyond the control of the respondents. Clause 22.1 of the agreement is reiterated hereunder:

"22.1. That the possession for the said plot as proposed to be delivered by the Seller/Confirming Party to the purchaser(s) within about 24 months from sanctioning of the Service Plans of the entire colony, simultaneous to the execution of sale deed subject however to Force Majeure and the Purchasers making all payments within the stipulated period and complying with the terms and conditions of this agreement. "

16. That the service plan for the entire project was approved on 21.03.2014.

Hence, the proposed due date of possession comes out to be 21.03.2016

17. Throughout this period, the respondents have faced grave difficulties. The respondents were affected by various circumstances beyond the control of the respondents, the benefit of which is bound to be given to the respondents as per clause 36 of the agreement.

18. 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) was regulated. 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. Respondents were faced with certain other 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. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A. No. 171/2013, wherein vide Order dated 02.11.2015, mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna river bed. These orders in fact inter-alia continued till the year 2018.

19. Acting in utmost bonafide, the respondents have also applied for completion certificate on 07.01.2014 and the same is pending before concerned authority. The grant of completion certificate is the prerogative of the concerned statutory authority over which the respondents cannot exercise influence. A copy of CC application dated 07.01.2014 is annexed as Annexure R-5.

20. That in light of the above-mentioned facts and circumstances, the doctrine of supervening impossibility applies. The doctrine of supervening impossibility or the doctrine of frustration becomes applicable when a contract becomes impossible to perform due to the happening of some unforeseen circumstances which were beyond the control or calculation of the parties involved. When such a contract becomes entirely impossible without the fault of the parties, the contract gets dissolved by this doctrine. This doctrine is based on the maxim 'Lex non cogit ad impossibilia'. The maxim essentially meant that "law does not compel the impossible". In light of non receipt of completion certificate the performance under the agreement has become impossible, hence the present complaint is liable to be dismissed.

E. ADDITIONAL DOCUMENTS BY THE PARTIES.

21. Respondent had filed an application under Section 151 of CPC for placing on record additional affidavit along with additional documents as Annexure R-6 to R-13 in registry on 24.03.2025.
22. Respondent had filed an application under Section 151 of CPC for placing on record the compliance affidavit along with annexures R-14 to R-16 in registry on 08.04.2026. It is stated as follows:-
- i. That vide Order dated 23.12.2025, this Hon'ble Authority directed the Respondent to file;

a. documents pertaining to the litigation pending before the Hon'ble Punjab and Haryana High Court; and

b. a list of alternate properties that would be suitable to the Complainant.

ii. In compliance of the said Order dated 23.12.2025, the Respondent now seeks permission of this Hon'ble Authority to place on record a Compliance Affidavit together with the following documents as ANNEXURES R-14 to R-16:

ANNEXURE R-14 Judgment dated 17.12.2018 passed by the Ld. Civil Judge (Jr. Division), Faridabad in Civil Suit No. CS-53893-2014 titled M/s Countrywide Promoters Pvt. Ltd. v. Rambir & Ors.

ANNEXURE R-15 - Judgment dated 17.01.2020 passed by the Ld. District Judge, Faridabad in Civil Appeal No. 11 of 2019 titled Rambir & Ors. v. M/s Countrywide Promoters Pvt. Ltd., whereby the First Appellate Court set aside the Judgment and Decree dated 17.12.2018 passed by the Civil Judge and dismissed the suit of M/s Countrywide Promoters.

ANNEXURE R-16-Orders dated 05.08.2022 and 25.02.2026 passed by the Hon'ble Punjab and Haryana High Court in RSA No. 954 of 2022 (O&M) titled M/s Countrywide Promoters Pvt. Ltd. v. Rambir & Ors., demonstrating the continued pendency of the litigation which is the root cause of the encroachment dispute affecting the accessibility of Plot No. W-11/38. Pendency pertains to the encroachment over the 12 meter wide approach road, which is adversely affecting the connectivity and access to

Plot no. W-11/38. Resolution of the present RSA is essential for removal of the said encroachment and for restoration of proper access to the aforesaid plot.

iii. That the Respondent further submits that in compliance of the directions of this Hon'ble Authority in the Order dated 23.12.2025, the Respondent is also placing before this Hon'ble Authority, by way of the accompanying Compliance Affidavit, three alternate options/choices for the Complainant's consideration, as detailed therein.

a.Full Refund of Paid Amount: The Respondent is willing to refund the entire amount paid by the Complainant towards Plot No. W-11/38, along with applicable interest as per the provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules framed thereunder, as may be determined by this Hon'ble Authority.

b. Allotment of Alternate Plot - Plot No. II-12, PARKLANDS, Faridabad:
The Respondent is willing to offer Plot No. II-12, admeasuring 350 sq. yds., situated in the project Parklands, Faridabad, as an alternate property to the Complainant in lieu of Plot No. W-11/38. The allotment of the alternate plot shall be subject to the terms and conditions and payment of outstanding amounts by the Complainant.

c.Buyback of Plot at Current Market Value: The Respondent is willing to purchase back / buyback Plot No. W-11/38 from the Complainant at the current prevailing market value of the said plot.

F. ARGUMENTS OF PARTIES

23. During the course of hearing on 09.04.2026, arguing counsel Adv. Rajan Hans for the complainant reiterated the submissions made in the complaint and requested to decide the complaint on merits. Today, ld. proxy counsel for Adv. Rajan Hans reiterated the submission to decide the case on merits.

24. During the course of arguments, learned counsel for the respondents submitted that plot bearing no. W11-38 admeasuring 302 sq. yds in the project 'Parklands' was initially allotted to the complainant on 24.02.2008. Thereafter, plot buyer agreement was executed between the parties on 24.02.2008. The project 'Parklands' is covered under the Self-Certification Policy dated 16.03.2010, as per which, any person intending to construct in a residential/industrial licensed plotted colony may apply under Rule 39 (1A)(i) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965, to the Director DTCP for approval of building plans. The construction can be started after fifteen days, in case any objection is not conveyed to the applicant. Accordingly, it is for the individual plot owners to initiate construction under the Self Certification Scheme which came into effect on 01 November, 2011. Further, under the Self Certification Scheme occupation certificate will be granted to the individual plot owners based on compliance of approved building plans. The complainant in present complaint was required to fulfill basic documentary conditions and he could have started construction without any further delay.

After construction of the unit, the allottee can get the occupation certificate without any need of completion certificate. A copy of the relevant orders of the competent Authority have been placed on record vide application dated 24.03.2025 filed by the respondent in the registry of the Authority.

25. Further, the aforementioned provisions are supported with the intent of legislature under the RERA Model Agreement under the HRERA Rules, 2017. That Clause 7 of the Model RERA Agreement provides for handover of possession of plot/unit/apartment, as the case maybe. The sub-clause 7.2 (A), provides for the procedure of taking possession of the Plot. That Clause 7.2 (A) is reiterated herein under for kind perusal of the Hon'ble Authority:

(1) Procedure for taking possession of Plot - The Promoter, upon obtaining the approved demarcation-cum-zoning plan? provision of services by the colonizer promoter, duly certifying/ part completion certificate, as the case may be, in respect of plotted colony shall offer in writing the possession of the plot within three months from the date of above, to the Allottee(s) as per terms of this Agreement. The Promoter agrees and undertakes to indemnify the Allottee(s) in case of failure of fulfillment of any of the provisions, formalities, documentation on part of the Promoter. The promoter shall provide a copy (on demand) of approved demarcation-cum-zoning plan/ provision of services by the colonizer part completion certificate in respect of plotted development (Residential/ Commercial/ Industrial/ IT Colony/ any other usage (as the case may be) alongwith parking (if applicable)] at the time of conveyance of the same. The Allottees, after taking possession, agree(s) to pay the maintenance charges and holding charges as determined by the Promoter!

association of allottees/ competent authority; as the case may be."

26. The aforementioned clause clearly exhibits that the respondent promoter can offer possession of the plot upon obtaining the approved demarcation cum zoning plan or upon provision of services by the promoter and/or completion certificate. Thus, the completion certificate is not required and zoning plan is suffice to offer possession. Learned counsel for the respondent further submitted that the respondent had applied for the grant of completion certificate on 07.01.2014, however till date the same has not been received from the competent department. This amounts to frustration of contract as the same is subject to pending approvals. The respondent cannot be held liable indefinitely. At present the plot is ready in all respects and the complainant can take possession upon payment of the outstanding amount. However, there is pendency of litigation over the encroachment issue of 12 meter approach road.

G. ISSUES FOR ADJUDICATION

27. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

H. FINDINGS ON OBJECTIONS OF THE RESPONDENTS

H.1 Objection raised by the respondents with regard to maintainability of complaint against Respondent no. 2

It is the submission on behalf of the respondents that respondent no. 2, i.e., Countrywide Promoters Pvt. Ltd., is neither a necessary nor a proper party to the present complaint and the complaint is not maintainable against respondent No. 2. That the respondent No. 2 is merely a confirming party to the floor buyer's agreement executed between the complainants and respondent No. 1 and has no independent contractual obligations, nor has any relief been sought against it by the complainants. In this regard it is observed that the submission of the respondents regarding respondent No. 2 being an unnecessary party is wholly misconceived. The plot buyer agreement has been jointly executed between the complainants, BPITP Ltd., and M/s Countrywide Promoters Pvt. Ltd. As per said agreement, the seller, being respondent no. 1, 'M/s BPITP Ltd' and the confirming party, being respondent no. 2, 'Countrywide Promoters Pvt. Ltd' as per their mutual agreement has authorised the seller to develop/construct, sell, market, deal, negotiate and execute agreement, sale deed etc, with prospective purchasers (including present allottees/complainants) rates and terms and conditions to be determined in its sole discretion and to receive payments, issue receipts thereof in its own name. Respondent no. 2 has empowered the respondent no. 1 to act on its behalf, however, that does not mean that the respondent no. 1 has no liability towards the present complainant. The contract clearly bears the names of both respondents, thereby establishing their joint responsibility. Meaning thereby that both

parties are jointly and severally liable towards the present complainants. The entire contractual relationship from the booking to receipt of payment and subsequent delivery of possession exists between both the respondents and the complainants. Hence, it can rightly be observed that respondent No. 2 is a proper and necessary party to the present proceedings. Accordingly, *the request of respondent for deleting name of respondent no. 2 is rejected.*

I. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

28. As per facts, the complainant in the present case is a subsequent allottee who had purchased booking rights qua the plot bearing no. W11-38, W-Block, Parklands, Faridabad from original allottee Mr. Pradeep Chaudhary in the year 2006. Thereafter, the plot was acknowledged in the name of complainant by the respondents vide endorsement letter dated 25.08.2006. An allotment letter was issued in the name of the complainant on 25.02.2008. A plot buyer agreement in respect of the plot in question was executed between the parties on 06.12.2008. As per clause 22.1 of the agreement the possession of the plot was to be delivered within a period of 24 months from the date of sanction of service plans. It is the submission of the complainant that more than 14 years have passed from the signing of a buyers agreement between the parties in respect of plot bearing no. W11-38, however, the respondents are not in position to deliver possession of the said

plot to the complainant till date. Hence, the complainant has filed present complaint seeking possession of the booked plot or Alternate unit along with delay interest for the delay caused in delivery of possession.

29. Admittedly, as per clause 22.1 of the agreement, possession of the plot should have been delivered within a period of 24 months from the date of sanction of service plans. As per respondents, service plans for the entire project got approved on 21.03.2014, hence deemed date of possession comes out to 21.03.2016. Complainant in its complaint has stated that the deemed date of possession is 06.12.2010, i.e., 24 months from date of execution of plot buyer agreement. In view of contradictory submissions of both parties it is observed that, clause 22 of the agreement where the possession has been subjected to sanctioning of service plans, the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the plot buyer agreement by the promoter is just to evade the liability towards timely delivery of the plot and to deprive the allottee of his right accruing after delay in delivery possession. Further, the copy of service plans dated 21.03.2014 has not been placed on record by the respondents to corroborate the said fact. Thus, the plea of the respondents pertaining to approval of service plans on 21.03.2014 does not have any authenticity attached to it and therefore, it cannot be relied upon for determining the deemed date of possession.



30. In view of aforementioned observation, taking a period of 24 months from the date of plot buyer agreement i.e 06.12.2008, possession of the plot should have been delivered to the complainant on 06.12.2010. Therefore, the deemed date of delivery of possession works out to 06.12.2010.
31. Admittedly, the delivery of possession of the plot in question has been delayed beyond the stipulated period of time. Respondents have attributed this delay in construction of the project due to disruption in construction activity due to regulation of mining activities of minor minerals as per directions of Hon'ble Supreme Court, non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal and stay on mining activities by National Green Tribunal in several cases related to Punjab and Haryana. However, respondents have failed to attach copies of the respective orders banning/ prohibiting the construction activities. Respondents have failed to adequately prove the extent to which the construction of the project in question got affected.
32. As per observations recorded in the preceding paragraph possession of the plot should have been delivered to the complainant by 06.12.2010. However, respondents failed to complete construction of the project and deliver possession within stipulated time. It is the submission of the complainant that till date respondents are not in a position to deliver possession of the booked plot to the complainant. On the other hand, learned counsel for the respondents during the course of oral arguments has submitted that the



project 'Parklands' is covered under the Self-Certification Policy dated 16.03.2010, as per which, any person intending to construct in a residential/industrial licensed plotted colony may apply to the Director DTCP for approval of building plans. The construction can be started after fifteen days, in case any objection is not conveyed to the applicant. Thus it is incumbent upon the individual plot owners/allottees to initiate the process of construction upon the booked plot. Accordingly, it was the complainant who should have started construction after fulfilling the necessary documentary conditions with the competent department. After construction of the unit, the allottee would have received the occupation certificate without any need of completion certificate. It has been further contended by the respondents that as per Clause 7 of the Model RERA Agreement the respondent promoter can offer possession of the plot upon obtaining the approved demarcation cum zoning plan or upon provision of services by the promoter and/or completion certificate. Thus, the completion certificate is not required and zoning plan is suffice to offer possession. Learned counsel for the respondents also averred that the respondents have already applied for completion certificate on 07.01.2014, however, till date the competent department has not processed the application of the respondents which amounts to frustration of contract and the respondents cannot be held liable indefinitely. The respondents have placed on record relevant policy documents vide application dated 24.03.2025. Further, respondents have stated that litigation before Hon'ble

High Court of Punjab & Haryana High Court, Chandigarh in respect of encroachment over 12 meter approaching road to plot is pending. In light of same, three options which includes; refund of amount; alternate unit and buyback of plot has been given to complainant.

33. After giving thoughtful consideration to the submissions advanced by both the parties as well as the material available on record, it is observed that admittedly the respondents were bound to deliver possession of the plot bearing no. W11-38, Parkland, Phase 3 to the complainant by 06.12.2010. However, despite a lapse of more than 14 years from the due date of possession, the respondents have not issued an offer of possession to the complainant in respect of the plot in question. The respondents in their submissions have relied upon a slew of policy documents issued by the competent Authority under 'Self Certification Policy' scheme submitting that the project in question namely 'Parklands' is covered under self certification policy and as per this scheme the complainant could have himself initiated formalities and begun construction upon the plot in question without any delay. However, for the complainant to begin these formalities, the complainant should have been handed over physical possession of the plot and should have also been made aware about the same.



34. As per the terms of agreement executed between the parties, the respondents were to first issue an offer of possession to the complainant in respect of the booked plot and only then the complainant could have initiated any further process upon the said plot. Without issuance of an offer of possession, the complainant could not have known that the plot was ready for construction. Admittedly, the 'Self Certification Policy' came into effect from 01.11.2011, i.e after lapse of the proposed due date of possession. The respondents have not placed on record any document to show that they had communicated the fact with regard to the applicability of the policy to the complainant. The complainant could not have offhandedly known that his plot was covered under this particular scheme. It is the primary obligation of the respondents to deliver a valid possession to the complainant. The respondents have also averred that in consonance with the clause 7 of the Model RERA Agreement, the respondents could have issued an offer of possession after approval of zoning plan. Though the respondents have placed on record a copy of zoning plan dated 30.11.2011, however, no communication/offer of possession has been issued by the respondents to the complainant apprising that the zoning plans for the project in question have been approved. It is further observed that for the purpose of initiating construction at the site, firstly all the internal services/ development works should have been completed by the concerned promoter and only then can an allottee begin construction upon the said project. However, in this instance the respondents

have failed to prove that as on 01.11.2011 i.e when the 'Self Certification Policy' came into effect all internal services had been laid down at the site and all developmental works on the part of the respondents had been completed. As such, no substantive evidence was produced by respondents to show that the project site was complete in all respects to support construction by individual owners. Hence, the plea of the respondents is rejected.

35. It has also been argued by the respondents that after construction of the plot under Self Certification Scheme, the allottee/complainant could have obtained occupation certificate without any need of completion certificate. However, a bare reading of policy document dated 01.07.2015 reveals that the grant of occupation certificate, in case, if building constructed on residential plots by individual allottees will be only in cases where services such as water supply, sewage, drainage electricity are made functional/operational by the coloniser and further certified by Superintending Engineer. The respondents have placed on record a report of Chief Engineer-I, HUDA Panchkula, dated 24.01.2018 certifying that the development works were completed by the respondents at the site in question. Meaning thereby that the site of the project namely, 'Parklands' became operational/functional only in the year 2018. Thus, even if the complainant had got completed the construction upon his plot prior to 2018,



the complainant could have received the occupation certificate. A conjoint reading of the aforementioned facts and circumstances clearly shows that the project in question was not ready for start of construction until 24.01.2018. Therefore, the averment of the respondents that the complainant could have applied under 'Self Certification Policy ' holds no weight.

36. Another argument of the respondents is to the effect that the respondents had applied for completion certificate with the competent authority on 01.01.2014. However, the application has since been kept pending on the part of the competent authority which is beyond the control of the respondents and thus amounts to frustration of contract. In this regard, it is observed that the concept of the doctrine of frustration under the Indian Contract Act, 1872: particularly Sections 32 and 56, uses the term "impossible" while discussing the frustration of a contract, i.e., a contract which becomes impossible or has been frustrated. In this context, "impossibility" refers to an unexpected subsequent event or change of circumstance which fundamentally strikes at the root of the contract. In the case of **Alopi Parshad and Sons Ltd vs Union of India, AIR 1960 SC 588** and the landmark **Energy Watchdog and Ors. Vs. Central Electricity Regulatory Commission and Ors (2017) - 2017 3 AWC 2692 SC**, the Supreme Court of India has categorically stated that mere commercial onerousness, hardship, material loss, or inconvenience cannot constitute frustration of a contract. Furthermore, if it remains possible to fulfill the

contract through alternate means, then a mere intervening difficulty will not constitute frustration. It is only in the absence of such alternate means that the contract may be considered frustrated. In the present complaint, the respondents have merely stated that their application for grant of completion certificate has been kept pending by the concerned department since 07.01.2014. However, the respondents have failed to place on record the correspondences/communications with the concerned department to bring forth the reasons as to why the said application has not been processed. In the absence of documentary evidence, Authority cannot rely on mere submissions of the respondents. Also in case the application of the respondents has been kept pending for any untoward reasons, the respondents have legal remedy ready at their disposal which they could have availed. This situation nowhere presents a picture of "impossibility" towards completion of the contract. Thus the averment of the respondents that the contract has been frustrated is found to be void.

37. In respect of litigation pending before Hon'ble Punjab and Haryana High Court Chandigarh for the issue of encroachment over 12 meter approaching road, it is observed that respondents have not substantiated the fact that said dispute in anyway affects the title/ownership of plot. As such, allotment rights are not bothered. Complainant is duly entitled to have possession of unit in question. Further, Alternate plot provided by respondent is Plot No. 11-12, having area of 350 sq. yds, which is not acceptable to the complainant.

38. Admittedly, till date a valid offer of possession has not been issued to the complainant. Without being issued a valid offer of possession, the complainant cannot begin construction over the plot in question. Further, as per observations recorded in para 30 of this order, the possession of the plot in question should have been delivered by 06.12.2010. Although there has been inordinate delay in delivery of possession, however, the complainant wishes to continue with the project in question. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked plot, the complainant is also entitled to receive interest from the respondents on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant. Therefore, the Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 06.12.2010 till a valid offer of possession is issued to the complainant supported with part completion certificate. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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;

Rule 15 of Haryana Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15: "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"

39. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in delivery of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the due date of possession till the date of a valid offer of possession.



40. Authority has got calculated the interest on total paid amount from due date of possession and thereafter from date of payments whichever is later till the date of offer of possession as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 16.07.2026 (in Rs.)
1.	25,81,043/-	06.12.2010	41,98,091
2.	4,55,824/- (Amount taken from SOA dated 09.04.2015.)	09.04.2015	5,27,627
Total:	Rs.30,36,867/-		Rs.47,25,718/-
Monthly Interest:	Rs. 26,957/-		

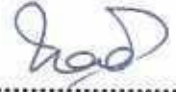
H. DIRECTIONS OF THE AUTHORITY

41. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondents are directed to pay upfront delay interest of Rs. 47,25,718/- (till date of order i.e 16.07.2026) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest of Rs. 26,957/- till a legally valid offer of possession is issued to the

- complainant after obtaining part completion/completion certificate from competent Authority.
- ii. The respondent shall issue a valid offer of possession along with statement of account to the complainant incorporating therein the principles laid down in this order within 30 days of obtaining part completion/completion certificate. Complainant shall accept the offer of possession within the next 30 days of the fresh offer.
 - iii. Complainant will remain liable to pay balance consideration amount, if any, to the respondents at the time of offer of possession.
 - iv. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.
42. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


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PARNEET S. SACHDEV
[CHAIRMAN]