

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

**Complaint no.** : 3868 of 2021  
**Date of filing complaint** : 28.09.2021  
**First date of hearing** : 11.11.2021  
**Date of decision** : 05.04.2022

1. Sanjay Gupta 2. Manisha Gupta <b>Both R/O:</b> - E-21, NIHFW, Munirka, New Delhi.	<b>Complainants</b>
Versus	
1. M/s BPTP Limited <b>Regd. office at:</b> - M-11, Middle Circle, Connaught Circus, New Delhi -110001 2. Countrywide Promoters Private Limited <b>Regd. office at:-</b> OT-14, 3 <sup>rd</sup> Floor, Next Door Parklands, Sector 76, Faridabad-121004.	<b>Respondents</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Prateek Gupta	Advocate for the complainants
Sh. Venket Rao	Advocate for the respondents

## ORDER

1. The present complaint has been filed by the complainants/allottees 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 promoters shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

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

<b>Project related details</b>		
<b>The License no. 58 of 2010 and 45 of 2011 comprising of total land area 108.068 Acres were previously sold by the promoters by the project name i.e., Amstoria.</b>		
1.	Name of the promoter	M/s Countrywide Promoters Private Limited
2.	Name of the project	'Amstoria'

3.	Location of the project	Sector-102 & 102A, Gurugram, Haryana.	
4.	Nature of the project	residential plotted colony	
5.	Whether project is new or ongoing	Ongoing	
6.	Registered as whole/phase	Whole	
7.	RERA registered/ unregistered	Registered	
8.	Registration no.	Not Registered	
9.	DTCP license no.	58 of 2010 dated 03.08.2010	45 of 2011 dated 17.05.2011
10.	License validity/ renewal period	02.08.2025	16.05.2017
11.	Licensed area	108.068 acres	18.61 acre
12.	Name of the license holder for 58 of 2010	M/s Shivanand Real Estate Pvt. Ltd. and 9 others.	
13.	Name of the license holder for 45 of 2011	M/s Shivanand Real Estate Pvt. Ltd. and 3 others.	
14.	Unit no.	A-138-GF, ground floor (annexure E on page no. 105 of complaint)	
15.	Unit admeasuring	1999 sq. ft. (annexure E on page no. 105 of complaint)	
16.	Date of building plan	19.09.2012 (as per DTCP report)	
17.	Date of execution of floor buyer's agreement	02.02.2012 (annexure E on page no. 99 of reply)	
18.	Total consideration	Rs. 93,34,170.32/- (annexure C on page no. 74 of	

		reply)
19.	Total amount paid by the complainants	Rs. 74,36,530.11/- (annexure C on page no. 74 of reply)
20.	Possession clause	<p><b>“5.1 Possession: -</b></p> <p>Subject to force majeure, as defined in clause 14 and further subject to purchaser(s) having complied with all its obligations under the terms and conditions of this agreement and the purchaser(s) not being in default under any part of this agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/ confirming party, <b>the Seller/confirming party proposes to hand over the physical possession of the said unit to the purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyer’s Agreement, whichever is later. (Commitment Period).</b> The Purchaser(s) further agrees and</p>

		understands that the seller/confirming party shall additionally be entitled to a period of 180 days (“Grace Period”) after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.” <b>(Emphasis supplied)</b>
21.	Due date of delivery of possession	19.09.2014 (Calculated from the date of building plan as it being later)
22.	Occupation certificate	not obtained
23.	Offer of possession	not offered
24.	Grace period utilization	Grace period is not allowed in the present complaint.

## B. Facts of the complaint

3. The captioned complaint is being filed by the complainants, inter-alia, seeking possession of the home purchased by the complainants, along with delayed possession charges.
4. The complainants are law-abiding citizen of India and resident of new Delhi. The complainants are doctor by profession and complainant No.1 works at national institute and family welfare, Government of India. It is respectfully submitted that the complainants have invested huge sum of

money in the project, “Amstoria”, located at Sector – 102 and 102A, Gurugram, Haryana (hereinafter referred to as “said project”). The said Project was initiated by the respondents pursuant to license No. 58 of 2010 dated 03.08.2010 and license No. 45 of 2011 dated 17.05.2011 granted by DGTCP, Haryana for development of residential colony over 126.674 acres of land in Section 102 and 102A, Gurugram. Subsequently, the respondent No.1 i.e. M/s countrywide promoters pvt. ltd. has registered the said project with this Hon’ble Authority with registration No. as GGM/415/147/2020/31 dated 09.10.2020.

5. It is submitted that the complainants purchased the unit no. A – 138 – GF, admeasuring 303 sq. yards. having 1,999 sq feet built-up Area (hereinafter referred to as “said unit”) in the said project. The said unit is the corner flat in the said project, which is adjacent to a green area in the said project. The said unit is also vastu compliant, east facing and consequently one of the best unit in the project. The complainant No.1 being in government service for last 28 years, had accumulated all his savings to purchase the Said Unit, for his and his family’s stay. It has now become emergent for the complainants to approach this Hon’ble Authority as his retirement is due in 2023 and still do not have a home for staying post retirement, as the

complainants reside in a government allotted accommodation in new Delhi, which has to be surrendered upon retirement. The complainants have already suffered loss of house rent allowance (“HRA”) to the extent of Rs. 50,000/- to 65,000/- per month approximately for last 6 years, which could have been saved, provided the respondents delivered the said unit, as committed by the respondents.

6. The respondent no.1 M/s countrywide promoters pvt. ltd. is a company incorporated under the companies act, 1956, having its registered office at OT-14, 3rd floor, next door, parklands, sector 76, faridabad, Haryana – 121004. Further, the respondent no.1 also has corporate office at 1st floor, dasnac annexure – 1, 28 ECE house, 1st floor, KG marg, New Delhi, 110 001. The respondent no.1 is the developer registered for the said project with this Hon’ble Authority.

7. The respondent no.2 M/s BPTP Ltd. is a company incorporated under the Companies Act, 1956, having its registered office at OT-14, 3rd floor, next door, parklands, sector 76, Faridabad, Haryana – 121004. Further, the respondent no.2 also has corporate office at 1st floor, dasnac annexuree – 1, 28 ECE house, 1st floor, KG marg, New Delhi 110 001. The respondent no.2 represented that the respondent no.1 is the company under which the land underneath the said project has been purchased and the respondent no.2 is the one responsible for

- marketing and sales of the units in the said project. In essence, the respondent no.1 and respondent no.2 are one and the same entity. However, as and by way of abundant caution, the complainants have arrayed both entities as respondents in the present complaint.
8. In the year 2010, the respondents hugely marketed and promoted the said project using a renowned and reputed brand name of “BPTP Limited”. Since, complainants were already looking for a residential unit and such a reputed brand was involved in development of the said project, the complainants showcased their interest in the said project. It is submitted that the respondents represented that the said project includes residential units, community sites, commercial areas, club / recreational facility, etc. It was further represented by the respondents that the said project is a mixed-use lifestyle complex and will have a luxurious residential apartment with superior quality fittings. It is further represented that the respondents are committed to handover the possession of the units, along with other facilities and/or amenities, in a timely manner.
9. Believing on the aforesaid representations and rosy picture portrayed by the respondents, the complainants booked the said unit with the respondents on 27.10.2010 in the said project. It is further submitted that the complainants also made a payment of Rs. 8,63,643/- towards the booking amount for allotment of a residential unit.



10. It is further submitted that the respondents duly acknowledged the receipt of Rs. 8,63,643/- paid by the complainants towards allotment of a residential unit.
11. Subsequently, as agreed by the complainants, the complainants further paid the next installment on 02.03.2011 to the tune of Rs. 8,63,641/- which was due within 90 days of booking, by way of two cheques. It is submitted that the complainants have duly paid a sum of Rs. 74,36,530/- and Rs. 31,096/- towards TDS, till date to the respondents.
12. Subsequently on 02.02.2012, a floor buyer agreement, (hereinafter referred to as "FBA") was executed between the complainants and the respondents, towards the allotment of residential unit no. A - 138 - GF, admeasuring 303 sq. yards. having 1,999 sq ft built-up area (said unit), in the said project. It is submitted that following were the terms and conditions in the said agreement
  - a) The complainants were allotted residential unit no. A - 138 - GF, admeasuring 303 sq. yards. having 1,999 sq ft built-up area, in the said project;
  - b) The total sale consideration of the said Unit was Rs.93,34,171/-
  - c) The possession of the said Unit was to be handed over to the complainants within twenty four (24) months from the date of approval of the building plans or execution of the floor buyer agreement, whichever is later (hereinafter referred to as "commitment period"). Moreover, the respondents Company were entitled to additional grace

period of one hundred and eighty (180) days, after expiry of the commitment period;

- d) In case of delay in handing over of possession of said Unit by the respondents company, the complainants shall be entitled to delay possession charges calculated @ 10/- per sq. ft./month of the built up area for every month of delay for the first six months of delay. Thereafter, the delay possession charges are calculated @ 20/- per sq. ft./month of the built-up area for every month of delay for the next six months of delay. If the possession is still not handed over, then the delay possession charges are calculated @ 30/- per sq. ft./month of the built-up area for every month of delay for remaining delay until possession is handed over
- e) However, in case of delay in making payments by the complainants, the complainants are liable to pay delay interest @ 18% per annum, compounded annually, from the date of default till the actual date of payment

It is submitted that the duly executed copy of the said agreement was handed over to the complainants by the respondents on 02.02.2012.

13. Subsequent to execution of the said Agreement, the respondents raised various demand notices from time to time towards payment of installments of the said Unit. There is no dispute between the parties regarding the demand raised by the respondents and installments paid by the complainants. However, by way of abundant caution, the

complainants are annexing the demand letters issued by the respondents.

14. It is submitted that the complainants, in terms of the aforesaid demand letters, made timely payments to the respondents and there has been no willful default whatsoever, on part of the complainants in making payments of any of the aforesaid Demand Notice(s), as raised by the respondents. It is submitted that all the payments made by the complainants to the respondents were duly acknowledged by the respondents in its statement of account dated 02.06.2020 issued by the respondents to the complainants. Therefore, it is admitted position between the parties that there is no outstanding dues between the parties.
15. It is submitted that as on 02.06.2020, the complainants have made a total payment of Rs. 74,36,530 and Rs. 31,096/- towards TDS, to the respondents for the said unit. It is respectfully submitted that aforesaid payments accounts to nearly 80% of the total sale consideration of the said Unit and nearly 90% of the Basic Sales price of the Said Unit. The details of the Installments are as under:
- i) 27.10.2010 - paid Rs. 8,63,643/- bifurcated in two separate cheque of Rs. 8,41,963/- and Rs. 21,680/-;
  - ii) 02.03.2011 - paid Rs. 8,63,643/- bifurcated in two separate cheque of Rs. 5,63,641/- and Rs. 3,00,000/-;
  - iii) 24.05.2011 - paid Rs. 11,01,924/- bifurcated in three separate cheque of Rs. 2,22,000/-, Rs.2,45,000/- and Rs. 6,34,924/-;

- iv) 30.03.2012 – paid Rs. 11,01,924/- bifurcated in two separate cheque of Rs. 10,03,240/- and Rs. 98,685/-;
- v) 05.10.2012 – paid Rs. 37,378 vide Cheque;
- vi) 25.05.2018 – paid Rs. 9,05,620/- bifurcated in two separate cheque of Rs. 3,97,575/- and Rs. 5,00,000/-.  
The complainants deducted TDS of Rs. 8,046/- which has been duly deposited by the complainants;
- vii) 24.07.2018 – paid Rs. 9,42,997.85/- bifurcated in two separate cheque of Rs. 4,34,577.85/- and Rs. 5,00,000/-.  
The complainants deducted TDS of Rs. 8,420/- which has been duly deposited by the complainants;
- viii) 20.08.2018 – Paid Rs. 9,43,248.39/- bifurcated in two separate cheque of Rs. 4,34,933.39/- and Rs. 5,00,000/-.  
The complainants deducted TDS of Rs. 8,315/- which has been duly deposited by the complainants;
- ix) 25.03.2019 – paid Rs. 7,07,248.39/- bifurcated in two separate cheque of Rs. 4,00,933.39/- and Rs. 3,00,000/-.  
The complainants deducted TDS of Rs. 6,315/- which has been duly deposited by the complainants
16. Despite the repeated follow ups, the respondents never informed the complainants that the building plans were approved somewhere in 2014 and therefore the commitment period for delivery of possession of the said unit was to be considered from 2014. However, the said information was only provided to the complainants orally when they visited the office of the respondents in 2021. Prior to the said visit,

no such information had been provided to the complainants. Event till date, the said information has not been provided to the complainants in written. The said oral statements were made by the officials of the respondents to coerce the complainants to opt for an inferior alternative Unit, after making additional payments to the respondents. Such conduct of the respondents is deplorable and outrageous and travesty of justice. The respondents be directed to place on record all permissions and approvals from the DGTCP and other authorities, to show the exact date of approval of the building plans and other permissions by DGTCP.

17. Without prejudice to the above and assuming without admitting that the first sanctioning of the building plan was given in 2014, the commitment period ought to be computed from the date of execution of FBA, instead of the date of sanctioning of the building plan. In this regard, it is submitted that the conduct of the respondents itself establishes that the commitment period has to be computed from the date of FBA. The perusal of the above emails (email dated 12.09.2014 @ annexure G8, email dated 10.02.2017 @ annexure G13 and email dated 27.09.2017 @ annexure G17), the respondents led the complainants to believe that the delay possession charges commenced upon completion of 24

months from the date of signing of the FBA and 6 months of grace period thereafter. At this juncture, the complainants duly place reliance on the judgment dated 20.04.2007 of the Hon'ble National Consumer Disputes Redressal Commission ("NCDRC") in Brig. (Retd.) Kamal Sood vs M/S. DLF Universal Ltd. 2007 SCC OnLine NCDRC 28 : [2007] NCDRC 28, where the Hon'ble NCDRC has held that it is unfair trade practices of the builders who collect money from the prospective buyers before obtaining requisite permissions and approvals such as approval of the building plans.

18. It is trite law (doctrine of contra proferentum) that the terms of the contract ought to be interpreted against the drafting party which is the respondents in the present case. The complainants were made to execute the FBA, without being informed about the lack of sanctioned building plan and infact misguided by the information that the Director Town and Country Planning, Haryana ("DTCP") has granted "licenses Nos. 58 of 2010 for developing a residential colony" (recital 1 of the FBA). In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court of India in Bank of India vs. K. Mohan Das 2009 (5) SCC 313.\
19. It is respectfully submitted that the period of commitment period expired on 02.02.2014 and additional grace period of

180 days expired on 02.07.2014, however, till date, the respondents has neither handed over the possession of the said unit nor completed the construction of the said Project.

20. It is submitted that the photographs of the said project, as annexed by the complainants, showcases a very sad state of affairs qua the construction and completion of the said project/unit.

21. It is respectfully submitted that as on 02.09.2021, the respondents have delayed the possession of the said Unit by 86 months, despite receiving more than 80% of the payment in lieu of the total sale consideration and 90% of the sale consideration of the unit.

In view of the above facts and circumstances and the law elaborated herein above, the complainants are approaching this Hon'ble Authority to direct the respondents to forthwith provide said unit to the complainants along with the delay possession charges for the delay in handing over of the said unit. Alternatively, the complainants pray to the Hon'ble Authority to direct the respondents to allot a similarly situated ground floor unit which is vastu compliant and adjacent to a green area, having built up area as 1,999 Sq Ft, to the complaints forthwith along with delay possession charges.

**C. Relief sought by the complainants.**

22. The complainants have sought following relief:

- (i) Direct the respondents to pay delay possession charges for the delay of 86 months in handing over of a unit along with further delay possession charges until date of actual possession.

**D. Reply by the respondents.**

23. That the present complaint under reply same has been filed without application of mind to the actual factual matrix, circumstances and controversy involved in the case at hand and is liable to be dismissed in the interest of justice. It is further submitted that the present complaint filed by the complainants are wholly misconceived, erroneous, unjustified, non-est and untenable in law. Besides being hasty, ulterior and extraneous, the present complaint have been filed in order to unlawfully gain at the expense of the respondents.

24. That agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented FBA dated 02/02/2012 executed by the complainants are out of their own free consent and will, also, without any undue influence or coercion are bound by the terms and conditions so agreed between them.



25. That the relief(s) sought by the complainants are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a sole basis for the subsisting relationship between the parties. Also, the complainants entered into the said agreement with the respondents with open eyes and is bound by the same. It is further submitted that the complainants are also bound by the clause (i) of undertaking dated 31/12/2012 (supra) given by the complainants under their signatures. Therefore, the relief{s} sought by the complainants travel way beyond the four walls of the agreement and the undertaking duly executed between the parties.
26. The complainants at the time of purchasing the unit has conducted the due diligence to their satisfaction and was acquainted with the terms and condition so the application for allotment and/ or FBA prior to the signing of the same and other documents subsequent to which she surfaced undertaking under their signatures. While entering into the agreement the complainants have read the terms and condition of the application form/ FBA and has accepted and is bound by each and every clause of the said form/ agreement, including Clause 20 of the application for allotment which has been further retraited under the clause - 6 of the FBA which per se provides for delayed penalty in case of delay in delivery of possession of the said unit by the respondents.

27. It further submitted that the detailed relief claimed by the complainants goes beyond the jurisdiction of this Hon'ble Authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainants. In this regard, reference may be made to section-74 of the Indian Contracts Act, 1872, which clearly spells out the law regarding sanctity and binding nature of the ascertained amount of compensation provided in the agreement and further specifies that any party is not entitled to anything beyond the same.
28. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainants are blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate".
29. It is pertinent to mention that on 16.03.2010, DTCP, Haryana (the statutory body for approval of real estate projects) issued self-certification policy vide notification dated 16.03.2010. The respondents in accordance with the policy and other prevailing laws submitted detailed drawings and designs plans for relevant buildings along with requisite charges and fees. In terms of the said Policy, any person could construct building in licensed colony by applying for approval of building plans to the director or officers of the department delegated with the powers for approval of

building plans and in case of non-receipt of any objection within the stipulated time, the construction could be started. The building plans were withheld by the DTCP, Haryana despite the fact that these building plans were well within the ambit of building norms and policies. The respondents applied for approval of building plans under the self-certification scheme. Although the department did not object to the building plans however, to ensure that there are no legal issues/ complications at a later date, the respondents also applied for approval of building plans under the regular scheme, which were subsequently approved.

30. It is however pertinent to mention that while the respondents were granted license bearing no. 58/2010 for setting up a residential plotted colony on land admeasuring 108.068 acres at village kherki majra and dhankot, sector 102 and 102 A, tehsil and district, Gurgaon for which the layout was also approved, subsequently additional license bearing no. 45/2011 was issued by DTCP for setting up plotted colony on land admeasuring 18.606 acres and at the stage of grant of additional license bearing no. 45/ 2011 for Amstoria, layout for the entire colony was also revised vide Drg. No. DTCP-5618 dated 16.09.2016, by DTCP. The revised planning of the entire colony submitted to the DTCP has affected the infrastructure development of the entire colony including 'Amstoria Floors'. The said revision in demarcation was necessary considering the safety of the

allottees and to meet the area requirement for community facilities in the area. In view of the said major changes, it is imperative that the said approvals are in place before the floors are offered for possession to the various allottees.

31. It is further submitted that the construction was also affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide its order NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondents.
32. That the environment pollution (prevention and control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned within the Delhi-NCR region. The ban was commenced from 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018.
33. That thereafter, in 2019, the Hon'ble Supreme Court of India on 04/11/2019, in M.C. Mehta v. Union of India banned all the construction activities. The said ban was partially lifted by the Hon'ble Supreme Court on 09/12/2019 whereby

relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm. whereas the complete ban was lifted by the Hon'ble Apex Court on 14/02/2020.

34. It is imperative to mention herein that the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity crunch and non-funding of real estate projects and delay in payment of installments by customers etc. were the reasons for delay in construction and after that Government took long time in granting necessary approvals owing to its cumbersome process. Furthermore, the construction of the unit was going on in full swing and the respondent was confident to handover possession of the units in question. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site. It was communicated to the complainants vide email dated 26.02.2020 that the construction was nearing completion and the respondents was confident to handover possession of the unit in question

by March 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), construction came to a halt and it took some time to get the labour mobilized at the site.

35. That both the complainants and the respondents being the parties to the contract are bound by the terms and conditions of the same. It is apposite to mention herein that the parties vide clause 33 of the agreement dated 02.02.2012 both the parties have agreed for amicable settlement of disputes and in the event of failure of amicable settlement, to refer the matter to arbitration. Apparently, the complainants instead of invoking the Clause 33 of the FBA chose to file the instant complaint with ulterior motive and the same is in the breach of the agreement duly executed between the parties. Since the matter in dispute require the comprehensive adjudication and examination of evidences, cross examination of the parties etc., therefore, the same cannot be adjudicated in the summary proceedings.

36. Copies of all the relevant do 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**

The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### **E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

### **E. II Subject-matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### ***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondents.**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

37. Another contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of



coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

*“119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports.”*

38. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*“34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to*

*coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored.”*

39. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**F. II Objection regarding untimely payments done by the complainant.**

The respondent have contended that the complainants have made defaults in making payments as a result thereof, the respondents had to issue reminder letters dated 05.10.2012. The respondents have further submitted that the complainants have still not cleared the dues. The counsel for the respondent

stressed upon clause 7.1 of the buyer's agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

*"7. TIMELY PAYMENT ESSENCE OF CONTRACT. TERMINATION, CANCELLATION AND FORFEITURE"*

*7.1 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 instalment 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) neglects, omits, ignores, or fails for any reason whatsoever to pay in time to the Seller any of the installments or other amounts and charges due and payable by the Purchaser(s) within three (3) months from the due date of the outstanding amount or if the Purchaser(s) any other way fails to perform, comply or observe any of the terms and conditions on his/her part herein contained within the time stipulated or agreed to, 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 Incentive, brokerage charges paid by the Seller/Confirming Party to the broker in case the booking is done through a broker, etc....."*

40. At the outset, it is relevant to comment on the said clause of the agreement i.e., *"7. TIMELY PAYMENT ESSENCE OF CONTRACT. TERMINATION, CANCELLATION AND FORFEITURE"* wherein the payments to be made by the complainants have been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of

such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottee that even a single default by the allottees in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite complainants being in default in making timely payments, the respondents have not exercised his discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 7.2 of the flat buyer's agreement whereby the complainants would be liable to pay the outstanding dues together with interest @ 18% p.a. compounded quarterly or such higher rate as may be mentioned in the notice for the period of delay in making payments. In fact, the respondents have charged delay payment interest as per clause 7.2 of the buyer's agreement and has not terminated the agreement in terms of clause 7.1 of the buyer's agreement. In other words, the respondents have already charged penalized interest from the complainants on account of delay in making payments as per the payment schedule. However, after the enactment of the Act of 2016, the position has changed. Section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter would be liable to pay the allottees, in case of default. Therefore, interest on the delay payments from the complainants would be charged at

the prescribed rate i.e., 9.30% by the respondents which is the same as is being granted to the complainants in case of delay possession charges.

#### **G. Findings on the relief sought by the complainants.**

**Relief sought by the complainants:** The complainants have sought following relief:

- i. Direct the respondents to pay delay possession charges for the delay of 86 months in handing over of a unit along with further delay possession charges until date of actual possession.
41. In the present complaint, the complainants intend to continue with the project and are 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.”*

42. Clause 5.1 of the floor buyer’s agreement provides for handing over of possession and is reproduced below:

*“5.1 Possession: -*

*Subject to force majeure, as defined in Clause 14 and further subject to purchaser(s) having complied with all its obligations under the terms and conditions of this agreement and the purchaser(s) not being in default under any part of this agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/ confirming party, the Seller/confirming party proposes to hand over the physical possession of the said unit to the purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyer's Agreement, whichever is later. (Commitment Period). The Purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony."*

43. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the

purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

44. The counsel for the complainants submitted a list of units submitted by the respondents for opting new alternative unit against the unit already allotted to hem. The complainants were allotted a unit on the ground floor unit no. A- 138 GF whereas now the complainants are being offered unit No. A- 138 GF which categorically establishes that plot on which the units are situated is not under dispute. The respondents are directed to hand over the allotted unit or in case there is any plausible reason of not allotting the unit at the ground floor or otherwise an affidavit is submitted to the effect that the plot on which the units are situated is under dispute with the landowner and the unit on the GF has been offered erroneously then out of the three available units after making allotment of one ground floor unit in CR No.3810/2021, one unit at the ground floor shall be allotted to the complainants at the same rate on which original unit was allotted and the respondents shall not charge anything which is not permissible either on account of judgment of Hon'ble High

Court or Hon'ble Supreme Court of India, New Delhi or disallowed by the authority. The respondents shall not charge anything which are not part of the BBA. The counsel for the complainants stated at bar that complainant is willing to take any unit offered preferably on the ground floor which is in habitable condition at the time of offer of possession.

45. **Admissibility of grace period:** The promoters have proposed to hand over the possession of the said unit within period of 24 months from the date of building plans or execution of the buyer's agreement, whichever is later. In the present complaint, the date of building plan i.e., 19.09.2012 being later than the execution of the agreement i.e., 02.02.2012. So, the due date is calculated from the date of sanctioning of the building plan. Therefore, the due date of handing over possession comes out to be 19.09.2014. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. There is no material evidence on record that the respondents-promoters had completed the said project within this span of 24 months and had started the process for filing and obtaining the occupation certificate. As a matter of fact , the promoters have not offered the possession within the time limit prescribed by the promoters in the floor buyer's agreement nor has the promoters offered the possession till date. Accordingly, this. Relevant clause regarding grace period is reproduced below: -



*“The Purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days (“Grace Period”) after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.”*

**46. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on amount already paid by them. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.***

**47.** The legislature in its wisdom in the subordinate legislation under the provision of 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.

48. 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., 05.04.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
49. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoters, in case of default, shall be equal to the rate of interest which the promoters shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

*Explanation. —For the purpose of this clause— the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;”*

50. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being

granted to the complainants in case of delayed possession charges.

51. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of 5.1 of the floor buyer's agreement executed between the parties on 02.02.2012, the possession of the subject unit was to be delivered within 24 months from the date of sanctioning of building plan or execution of the agreement, whichever is later. The date of sanctioning of building plan i.e., 19.9.2012. Therefore, the due date of handing over possession is 19.09.2014. As far as grace period is concerned, the same is disallowed for the reasons quoted above. There is no material evidence on record that the respondents-promoters had completed the said project within span of 24 months and had started the process for filling and obtaining the occupation certificate. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the flat buyer's agreement dated 02.02.2012 executed between the parties. It is the failure on part of the promoters to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period.

52. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the respondent-promoters neither completed the said project nor started the process for filing and obtaining the occupation certificate. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 19.09.2014 till the expiry of 2 months from the date of offer of possession.
53. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents are established. As such, the complainants are entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 19.09.2014 till offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

#### **H. Directions of the authority**

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

- i. The respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 19.09.2014 till the date of offer of possession of the unit plus 2 months to the complainants as per section 19(10) of the Act.
- ii. The respondents are directed to handover the allotted unit or in case there are any plausible reason of not allotting the unit at the ground floor or otherwise an affidavit be submitted to the effect that the plot on which the units are situated is under dispute with the landowner and the unit on the FF has been offered erroneously then out of the three available units after making allotment of one ground floor unit in CR no. 3810/2021, one unit at the ground floor shall be allotted to the complainant at the same rate on which original unit was allotted and the respondent shall not charge anything which is not permissible either on account of judgement of Hon'ble High Court or Hon'ble Supreme Court of India, New Delhi or disallowed by the authority.
- iii. The arrears of such interest accrued from 19.09.2014 till the offer of possession shall be paid by the promoters to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.



- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoters 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.
- vi. The respondents shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoters 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.
55. Complaint stands disposed of.
56. File be consigned to registry.

v.i - 3  
(Vijay Kumar Goyal)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 05.04.2022