

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

Complaint no. : 5127 of 2019
First date of hearing: 26.11.2019
Date of decision : 22.08.2022

Praveen Gupta and Mona Gupta
R/o: - Villa No. 17, Espace, Nirwana Country, Sector- 50,
Gurugram, Haryana - 122001.

Complainants

Versus

1. M/s BPTP Limited.
2. M/s Countrywide Promoters Pvt. Ltd.

Respondents

**Regd. Office at: M-11, Middle Circle, Connaught
Circus, New Delhi-110001.**

CORAM:

Shri K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Sukhbir Yadav
Sh. Venkat Rao

Advocate for the complainants
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 promoter 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 allottees 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:

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 37-D, Gurugram
2.	Nature of project	Group Housing Towers
3.	RERA registered/not registered	Registered 299 of 2017 dated 13.10.2017
4.	DTPC License no.	83 of 2008 dated 05.04.2008 94 of 2011 dated 24.10.2011
	Validity status	04.04.2025 23.10.2019
	Name of licensee	SUPER BELTS COUNTRYWIDE PVT. LTD and 3 PROMOTERS PVT others LTD and 6 others
	Licensed area	23.18 acres 19.74
7.	Unit no.	T-24-803, Tower 24 [As per page no. 38 of complaint]
8.	Unit measuring	1691 sq. ft. [As per page no. 38 of complaint]
9.	Date of execution of Flat buyer's agreement	10.01.2013 (Page no. 33 of complaint)
10	Allotment Letter	06.12.2012

		(page no. 26 of complaint)
11.	Possession clause	<p>5. Possession</p> <p>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within e Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 10 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</p> <p>1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), Stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</p>
12.	Due date of possession	10.07.2016 (calculated from the execution of BBA)
13.	Basic sale Price	Rs. 88,77,750/-

		[AS per BBA on page no. 39 of complaint]
14.	Total amount paid by the complainant	Rs. 1,11,89,848/- (as alleged by the complainant)
15.	Occupation certificate dated	09.12.2021
16.	Offer of possession	not offered

B. Facts of the complaint

The complainants have made the following submissions in the complaint: -

3. That on 28/07/2012, the complainants booked a 3 BHK Flat admeasuring 1691 sq. ft. bearing Flat No. T24 – 803 in BPTP Terra, Sector – 37D, Gurugram and paid Rs. 6,00,000/- as booking amount. The flat was purchased under the subvention payment plan for sale consideration of Rs. 1,10,84,084/-.
4. That on 10.01.2013, builder buyer agreement (hereinafter called the FBA/BBA) was executed between the parties. As per clause No. 5.1 of builder buyer agreement, the respondents have to give the possession of flat “within the commitment period” and as per clause No. 1.6 of builder buyer agreement, the “Commitment Period” means 42 months from the date of sanction of the building plan or execution of flat buyer’s agreement, whichever was later. The building plan were approved before execution of FBA, inter alia due date of possession was 10.07.2016.



5. That on 21.01.2013, complainants have taken a home loan of Rs. 87,91,597/- from HDFC Ltd. against the said flat. The respondents issued permission to mortgage and signed on tripartite agreement on 11.01.2018. As per terms and conditions of this tripartite agreement, the respondents have to bear the interest from first date of disbursement till 30.06.2015.
6. That on 01.10.2019, the respondents sent a statement of account of subject flat, which shows that till date 29.07.2017, they called Rs. 1,06,26,051/- and the Complainants had paid Rs. 1,11,89,848/- i.e. more than 100% of total sale consideration, showing credit balance of Rs. 5,63,797/-.
7. That since December, 2015, the complainants were regularly visiting to the office of respondents as well as construction site and making efforts to get the possession of allotted flats, but all in vain. The complainants never been able to understand/know the actual status of construction. Though towers seem to be built up but no progress was observed on finishing and landscaping work.
8. That the work on other amenities, like external, internal mep (Services) was yet not completed. Now it is more than 9 years from the date of booking and even the constructions of towers is not completed. It clearly shows the negligence of the builder. As per project site conditions, it seems that project would take further more than a year to complete in all respect, subject to willingness of respondents to complete the project.



C. Relief sought by the complainants:

The complainants have sought following relief(s).

- i. To get refund the paid amount Rs. 1,11,89,848.78/- along with interest.
- ii. To get compensation of Rs. 10,00,000/- (Ten Lakh) on account of mental agony and harassment caused by the Respondents.
- iii. To get litigation cost of Rs. 1,00,000/- (Rs. One Lakh).

D. Reply by the respondents:

9. It is submitted that the complainants have approached this hon'ble authority for redressal of his alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the Court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- i) That complainants are investor and booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the



complainants have filed the present purported complaint to wriggle out of the agreement.

ii) That the complainants falsely stated that the timely payments were made by them as and when demanded by respondents. However, as detailed in the reply to list of dates, it is submitted that the complainants made several defaults in making timely payments as a result thereof, respondents had to issue reminder letters for payment of the outstanding amounts.

iii) That the complainants in the entire complaint concealed the fact that no updates regarding the status of the project were provided to him by the respondents. However, they were constantly provided construction updates by the respondents vide emails dated 25.09.2015, 16.03.2017, 24.04.2017, 24.05.2017, 21.06.2017, 28.07.2017, 21.08.2017, 11.12.2017, 26.03.2018, 09.04.2018, 08.05.2018, 15.06.2018, 09.09.2018, 07.11.2018, 19.12.2018, 21.01.2019, 24.01.2019, 24.02.2019, 22.03.2019, 19.04.2019 and 15.05.2019 respectively.

From the above, it is very well established, that the complainants have been distorting/concealing/misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainants is to unjustly enrich at the expense of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in light



of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

10. That the project in question was launched by the respondents in August 2012. It is submitted that while the total number of flats sold in the Project "Terra" is 401, for non- payment of dues, 78 bookings/ allotments have since been cancelled. Further, the number of customers of the Project "Terra" who are in default of making payments for more than 365 days are 125. Hence, there have been huge defaults in making payments of various installments by large number of applicants.
11. 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.

D. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.



D.II Subject-matter jurisdiction

12. 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) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

13. 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.
14. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** "SCC Online SC 1044 decided on 11.11.2021" wherein it has been laid down as under:



"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

15. Furthermore, the said view has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in ***"Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021.*** The relevant paras of the above said judgment reads as under:

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to



await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

16. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, and the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)**", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

E. Findings on the relief sought by the complainant.

E. I Direct the respondents to return sale consideration sum of Rs. Rs. 1,11,89,848 received by them from the complainants till date along with prescribed interests.

17. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject apartment along with interest at the prescribed rate as provided under section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference.

"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,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

18. The complainants were allotted unit no. T-24-803, Tower 24, in the project 'Terra' by the respondent-builders for a basic consideration of Rs. 88,77,750/-and he paid a sum of Rs. 1,11,89,848/-which is more than 100% of the sale consideration. it is pertinent to mention here that the complainants visited at the site of the project and found that there was no construction going on.

19. Keeping in view the fact that the allottee complainants wishes to withdraw from the project and demanding return of the amount received by the promoters in respect of the unit with interest on failure of the promoters to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per agreement for sale



as mentioned in the table above is 10.07.2016 and there is delay of 3 years 3 months 20 days on the date of filing of the complaint.

20. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainants is situated was received after filing of application by the complainants for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottees have already wished to withdraw from the project and they have become entitled to right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter are liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.
21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously



provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

22. The promoters are responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoters have failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoters are liable to the allottees, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

23. The authority hereby directs the promoters to return the amount received by them i.e., Rs. 1,11,89,848/- with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of



each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

24. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the rate of 18% p.a. However, allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided 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.

25. 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.
26. 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., 22.08.2022 is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.
27. 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 is established. As such, the complainants are entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 10% p.a. from the date of payment of each sum till its actual realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

E.II Direct the respondents to pay Rs. 10,00,000/- as litigation expenses.

E.III Direct the respondents to pay Rs. 10,00,000/- as compensation for mental agony and harassment

28. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

29. 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 promoter as per the function entrusted to the authority under section 34(f):


- i. The respondent/promoters are directed to refund the entire amount of Rs. 1,11,89,848/- paid by the complainants along with prescribed rate of interest @ 10% p.a. from the date of each payment till the actual date of refund of the deposited amount from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondents are further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.

30. Complaint stands disposed of.

31. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman

Dated: 22.08.2022