

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

Complaint no. : 5016 of 2020  
Date of filing complaint : 10.03.2021  
Date of decision : 22.08.2022

Shailesh Srivastava <b>R/O:</b> - House No. L-3/11, Sector-D, Aliganj, Lucknow-226024	<b>Complainant</b>
Versus	
1. M/s BPTP Limited 2. M/s Countrywide Promoters Pvt. Ltd. <b>Regd. Office at:</b> - M-11, Middle circle, Connaught Circus, New Delhi-110001	<b>Respondents</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Chandan Singh	Advocate for the complainant
Sh. Venkat Rao	Advocate for the respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 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:

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 37-D, Gurugram
2.	Nature of project	Group Housing Towers
3.	<b>RERA registered/not registered</b>	Registered 299 of 2017 dated 13.10.2017
4.	<b>DTPC License no.</b>	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 PVT. LTD and 3 others   COUNTRYWIDE PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres   19.74
7.	Unit no.	T-25-1801, Tower 25 [As per page no. 43 of complaint]
8.	Unit measuring	1691 sq. ft. [As per page no. 43 of complaint]
9.	Date of execution of Flat buyer's agreement	14.08.2013 (Page no. 37 of complaint)
10.	Possession clause	<b>5. Possession</b>



		<p><b>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period.</b> 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><b>1.6 "Commitment Period"</b> 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 <b>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.</b></p>
12.	Due date of possession	14.02.2017  (calculated from the execution of BBA)
13.	Basic sale Price	<b>Rs. 1,01,46,000/-</b>  [AS per BBA on page no. 44 of

		complaint ]
14.	Total amount paid by the complainant	Rs. 1,09,38,440/- (as alleged by the complainant)
15.	Occupation certificate dated	09.12.2021
16.	Offer of possession	not offered

### **B. Facts of the complaint**

3. That the complainant booked a 3 BHK apartment on 29.05.2013 bearing an apartment no. T-25-1801 in tower- T25 having a super area of 1691 sq. ft. in the project "Park Terra", Sector -37D, Gurugram. The apartment was booked for a total sale consideration of Rs. 1,14,77,242/- under subvention payment plan. It is pertinent to mention here that at the time of booking the respondents assured that possession of the flat/apartment shall be handed over on or before 30.06.2015.
4. That the complainant applied for a housing loan from HDFC Ltd. and HDFC Ltd. issued a housing loan approval letter dated 22.05.2013 for loan amount Rs. 91,14,154/-
5. That on 14.08.2013, a pre-printed, unilateral, one-sided, arbitrary, and ex-facie builder buyer's agreement was executed inter-se the respondent-promoters and the complainant. This agreement has a plethora of clauses and according to clause no. 5.1, the seller/confirming party proposes to offer possession of the unit to the purchaser(s) within the commitment period. The seller/confirming party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said commitment period

for making an offer of possession of the said unit. Clause no. 1.6 of BBA i.e. states that the seller/confirming party would 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. It is pertinent to mention here that building plans were sanctioned on 23.05.2012. Therefore, the due date of possession as per BBA was on or before 14.02.2017.

6. That the complainant availed a housing loan from HDFC Bank against the said unit with the permission of the respondents. The respondents issued permission to mortgage in favour of HDFC Ltd. and signed the tripartite agreement which was executed inter-se the respondents, the complainant, and the bank. As per said tripartite agreement, the respondent(s) have to pay interest on the disbursed amount till 30.06.2015. It is again pertinent to mention here that at the time of booking, the respondents assured that possession of the flat/apartment would be handed over on or before 30.06.2015.
7. That, the complainant continued to pay each of the remaining installments as per the payment schedule of the builder buyer's agreement and has already paid more than 95% amount i.e. Rs. 1,09,38,440.40/- along with other allied charges demanded from time to time. The complainant, however, observed that there was no progress in the construction/finishing of the subject apartment as per the committed time frame, and accordingly raised his grievance to the respondents. Though the complainant was always ready and willing to pay the remaining installments provided if there is progress in the construction/finishing of the apartment.

8. That the complainant visited several times to the office of the respondents to get the refund and interest on paid money, but every time the office bearers made lame excuses and narrated concocted stories. . It is pertinent to mention here that the complainant has availed housing loan of Rs. 91,14,154/- from HDFC Ltd. and are paying EMI / Pre- EMI on loan.
9. That the work on other amenities, like External, Internal MEP Services of the project is not yet completed. Even post 7 years of booking, the respondents have failed to complete the construction of all apartments reflecting a disregard, unprofessionalism, and negligence upon their part. Based on the present status of the project, it seems that the project would take at least another two years to be completed in all respects, subject to the willingness and intent of the respondents to complete the project

**B. Relief sought by the complainant:**

The complainant has sought following relief(s):

- To direct the respondents to refund the amount of Rs. 1,09,38,440/- received by it from the complainant.

**C. Reply by the respondents**

10. It is submitted that the complainant has 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 cases has laid down strictly, that a party approaching the Court/Authority 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/Authority and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- a) That the complainant has concealed the fact that he has committed defaults in making timely payments of various installments within the stipulated time.
- b) That the complainant has concealed before this Hon'ble Authority that on his request, the respondents by showing goodwill gesture gave discount on basic sale price amounting to Rs.2,53,650/-, and Pre-EMI benefits under subvention scheme amounting to Rs.6,12,559/- being additional burden on them. It is pertinent is mention here that on the one hand, the respondents gave benefits to the allottees for timely payment and on the other hand, majority of customers defaulted in timely payment including the complainant.
- c) That the complainant has further concealed from this Hon'ble Authority that the respondents being a customer centric organization vide demand letters as well as numerous emails has kept updated and informed the complainant about the milestone achieved and progress in the developmental aspects of the project. The respondents vide emails have shared photographs of the project in question. However, it is evident that the respondents have always acted bonafidely towards its customers including the complainant, and thus, have always maintained a transparency in reference to the project. In addition to updating the complainant, the respondents on numerous

occasions, on each and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance. However, notwithstanding the several efforts made by the respondents to attend to the queries of the complainant to his complete satisfaction, he erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority against the respondents.

- 11.** From the above, it is very well established, that the complainant has approached this Hon'ble Authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainant is to unjustly enrich himself 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.
- 12.** The construction of the unit was going on and the respondents would offer possession soon, as they invested the resources from the external sources. However, it be noted that due to the sudden outbreak of present pandemic of novel coronavirus (COVID 19), construction came to a halt and it took some time to get the labour mobilized at the site. However, the respondents are hopeful to handover possession of the unit in question at the earliest.
- 13.** That with regard to the construction of the tower in which the unit in question is located, work such as structure work, brickwork, internal & external plaster works, and IPS flooring work is



completed. That around 95% of the construction with regard to tower T-25 in the project 'Terra' is complete and for the remaining construction, work is going at full pace at the site and the respondents shall be handing over the possession shortly.

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

**E. Jurisdiction of the authority**

15. 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**

16. 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**

17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 promoters 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 relief sought 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 E.**

18. The 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. The 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)** decided on 06.12.2017 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 floor 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."*

19. Further, 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 as under-

*"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."*

20. 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.

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

**G.I Direct the respondents to refund the amount of Rs. 1,09,38,440/- along with prescribed rate of interest.**

21. Keeping in view the fact that the allottee complainant 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 14.02.2017 and there is delay of 3 years 10 months 30 days on the date of filing of the complaint.

22. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated was received after filing of application by the complainant for return of the amount received by the promoters 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-allottee has already wished to withdraw from the project and has become entitled to his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from them as they failed to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoters are liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate.
23. 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*

24. 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 promoter has 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 allottee, as 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 the unit with interest at such rate as may be prescribed
25. As the request for refund has been made by the complainant before obtaining occupation certificate by the promoter and after due date of possession is over, accordingly the authority considers the request for refund and allowed refund alongwith prescribed rate of interest subject to adjustment of pre-EMIs.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee

does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

27. 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.
28. 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., 29.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
29. 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 promoter, in case of default, shall be equal to the rate of interest which the promoter 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;”*

30. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges

#### **F. Directions of the Authority:**

31. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoters are directed to refund the amount paid by the complainant i.e. Rs. 1,09,38,440/- along with interest @10% p.a. from the date of each payment till actual payment subject to adjustment of pre-EMIs..





- 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 complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.

32. Complaint stands disposed of.

33. File be consigned to the Registry.

v.i-3  
(Vijay Kumar Goyal)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 22.08.2022