BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1990 of 2018
First date of hearing: 04.04.2019
Date of decision : 22.08.2022

United Poly Engineering Pvt. Ltd.
R/o: - D-13/3, Okhla Industrial Area, Phase-II, New Delhi-110020.

Complainant

Versus

1. M/s BPTP Limited.
2. M/s Countrywide Promoters Pvt. Ltd.
3. M/s Precision Infrastructure Pvt. Ltd.
4. M/s Durzba Overseas Pvt. Ltd.

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

5. M/s Visual Builders Pvt. Ltd.

Regd. Office at: 1-102, 2nd floor, Parsavanath Gardenia, Sector-61, Noida-U.P. 201305

Respondents

CORAM:
Shri K.K. Khandelwal — **Chairman**
Shri Vijay Kumar Goyal — **Member**

APPEARANCE:
Sh. Nasim Ahmed proxy counsel — 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 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 complainant, 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 PVT. LTD and 3 others	COUNTRYWIDE PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres	19.74
7.	Unit no.	T-23-1802, Tower 23 [As per page no. 40 of complaint]	

8.	Unit measuring	1691 sq. ft. [As per page no. 40 of complaint]
9.	Date of execution of Flat buyer's agreement	28.01.2013 (page no. 35 of complaint)
10	Allotment Letter	07.12.2012 (page no. 29 of complaint)
11.	Possession clause	**5. Possession** **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. **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.
12.	Due date of possession	28.07.2016 (calculated from the date of execution)
13.	Total sale consideration	Rs. 1,09,6,529/- [as per payment schedule on page no. 47 of complaint]
14.	Total amount paid by the complainant	Rs. 82,73,993/- (as alleged by the complainant)
15.	Occupation certificate dated	Not obtained
16.	Offer of possession	not offered

B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

3. That on 28/07/2012, the complainant booked a residential flat is bearing unit no. T23-1802 admeasuring 1,691 sq ft for a total consideration amount of Rs. 1,09.06,529/- situated at the respondents project BPTP namely "TERRA" in Sector-37D, GURUGRAM.
4. That a booking amount of Rs.6, 00,000/- was paid as advance by the complainant vide cheque no.499770 on date 28.07.2012 drawn at HDFC BANK Delhi Branch and the respondents accepted the payment in the name of "M/S BPTP Limited" toward the booking amount.
5. That on 28.1.2013, a flat buyer agreement was executed between complainant and respondents. As per clause 1.6 of the flat buyers

agreement, it was stated that the seller would offer the possession of the fully complete unit to purchaser within 42 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever was later but the possession has not yet been delivered. Despite the fact that the respondents failed to deliver the possession of the said property, repeated and un-genuine demands were made by the respondents for payment.

6. That the respondents has failed to comply with the terms agreed in the agreement by not providing the possession within a period of 42 months from the date of signing of buyer's agreement i.e. from 28.01.2013 as mentioned in Clause 1.6 of agreement which itself got over in year 2016, though payment of Rs.82,73,993/- against the unit has been paid by the complainant as per the time schedule informed to the respondents.

7. That the complainant is suffering a huge financial and mental loss as when the demand note was issued by the respondents towards next instalments due date. It took a bank loan of Rs.87,50,000/- from HDFC Bank on 19 Feb 2013 at 11.4% rate of interest per annum.

8. That the complainant has many times requested the respondents to deliver the possession of the flat, but till date they have not handed over the possession of the said flat. It is pertinent to mention here that the respondents avoided furnishing the terms and conditions of the flat buyer agreement. The complainant did not witness any substantial

progress in the residential project and got wary of the investments made into the respondents project, already delayed substantially.

9. That in clause no.6.1 of the flat buyers agreement dated 28.1.2013, it was mentioned that in case of delay in handing over the possession to the allottee, the allottee(s) shall be entitled to compensation for delay @ Rs.5/- per Sq. Ft. per month of the super area of unit for the period of delay beyond 42 months till the date of possession.

10. The complainant cannot be expected to wait endlessly for the completion of the project. Hence, the complainant has preferred the present complaint for refund at a prescribed rate of interest.

C. Relief sought by the complainant:

The complainant has sought following relief(s).

I. Direct the respondents to return sale consideration sum of Rs. 82,73,993/- received by them from the complainant till date along with prescribed interest

D. Reply by the respondents:

11. 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 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 complainant being a company is an investor and has 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 complainant has filed the present purported complaint to wriggle out of the agreement.

ii) The complainant has concealed from this hon'ble authority that complainant has booked another unit in another project of the respondents , namely "Parklands".

iii) The complainant has further concealed from this hon'ble authority that under the subvention payment plan opted by the complainant, the respondents have disbursed an amount of Rs.8,87,783/- to the bank on behalf of the complainant as pre-EMI interest.

iv) The complainant has concealed from this Hon'ble Authority that the complainant has defaulted in making timely payments of the installments as and when demanded by the respondents in terms of the agreed payment plan. The complainant has also concealed from this Hon'ble Authority about various reminder letters sent to the complainant for payment of the outstanding amount.

From the above, it is very well established, that the complainant has approached 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 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. 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.

13. It is submitted that with regard to the construction of the tower in which the unit in question is located, work such as structure, brick work, internal and external plaster, IPS Flooring has been completed. MS railing work, plumbing work is in progress and wooden doorframe fixed. It is further submitted that the status of the construction in Tower T-23 is at an advanced stage 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 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 submissions made by the parties.

D. Jurisdiction of the authority

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

D.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.

D.II Subject-matter jurisdiction

17. 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.*

18. 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 complainant at a later stage.

19. 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."*

20. 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."*

21. 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. 82,73,993/- received by them from the complainant till date along with prescribed interest.

22. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by it 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)*

23. The complainant was allotted unit no. T-23-1802, Tower 23, in the project 'Terra' by the respondent-builder for a basic consideration of Rs. 1,09,6,529/- and he paid a sum of Rs. 82,73,993/-which is approx. 80% of the total sale consideration. It is pertinent to mention here that

the complainant visited at the site of the project and found that there was no construction going on.

24. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoters. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

> *"" .... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

25. 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

26. 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 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.

27. The authority hereby directs the promoters to return the amount received by him i.e., Rs 82,73,993/-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.

28. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by it at the rate of 18%

p.a. However, allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.*

29. 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.

30. 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%.**

31. 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 complainant is entitled to refund the entire amount paid by it 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.

H. Directions of the authority

32. 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 82,73,993/- paid by the complainant 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.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.08.2022