BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 687 of 2019
Date of filing complaint : 14.02.2019
First date of hearing : 01.10.2019
Date of decision : 29.08.2022

	Sandip Kumar Sinha **R/O: -** 60/141, Haripada Datta Lane, Tollygunge , Kolkata-700033.	**Complainant**
	Versus	
1. 2.	M/s BPTP Limited M/s Countrywide Promoters Private Limited **Regd. Office at: -** M-11, Middle Circle, Connaught Circus, New Delhi-110001	**Respondents**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Riju Mani	Advocate for the complainant
Sh. Venket Rao & Pankaj Chandola	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 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- 102, 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-20-904, Tower 20 [As per page no. 47 of complaint]	
8.	Unit measuring	1691 sq. ft. [As per page no. 47 of complaint]	

9.	Date of execution of Floor buyer's agreement	27.12.2012 (Page no. 41 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	27.06.2016 (calculated from the execution of BBA)
13.	Basic Sale price	Rs. 88,77,750/- [As per BBA]
14.	Total amount paid by the complainant	Rs. 1,01,21,677/- (as alleged by the complainant)
15.	Occupation certificate dated	***09.12.2021***
16.	Offer of possession	***15.12.2021***

B. Facts of the complaint

3. That the complainant booked a unit in the project of the respondents namely, "Terra" located at Sector 37-D, Gurgaon, Haryana. On E REG 27.12.2012, the complainant received an allotment letter from the respondents of unit bearing no. T20-904 admeasuring 1,691 sq. ft. for total consideration of the unit was Rs.1,03,73,864/-

4. That in the present case the complainant has been arbitrarily charged without reaching any milestone in the construction of the project. The complainant till date has paid an amount of Rs. 1,01,21,677/- out of the total consideration. The complainant has made the payment by pooling all his resources and spending all his life savings and the non-completion of the unit and the act of the respondents of illegally retaining his money has resulted into mental and financial harassment of the complainant for a period of around 6 years.

5. That a glaring example of the fraudulent nature of the respondents in charging the complainant as per their whims and without the completion of the relevant stage of the project is the demand made on 02.12.2015 and 13.10.2016. It is submitted that on 02.12.2015, the respondents made a demand of Rs.9,43,298.60/- for achieving the landmark "ON START OF BRICKWORK OF TENTH FLOOR OR WITHIN 33 MONTHS OF BOOKING". The complainant again received a demand on 13.10.2016 for the landmark, "ON CASTING OF TOP FLOOR ROOF SLAB OR WITHIN 30 MONTHS OF BOOKING". That as per normal understanding and the payment plan the demand to be made within 33 months and the relevant construction stage could not have been made before the demand which was to be made within 30 months on casting of the top floor slab. A reference to the payment plan, Annexure-C of the Agreement clearly points out the same. That it is evident that conformity with the payment plan nor explanation had been given for the same. It is also crystal clear that the respondents had blatantly lied and taken the money in advance by their demand letter dated 02.12.2015 when they were demanding money for former stage in e demanding for the 2016, that is one year after. That no explanation is forthcoming for not making demands as per the payment plan and this illustrates that the respondents had only concerned themselves with retaining the money of the complainant without bothering to complete the relevant stage of the project.

6. That regardless of the stage of construction, the complainant was consistently getting demand letters from the respondents to make the payments. That perturbed by the same, he made various

inquiries from the respondents regarding the stage of construction and the date of delivery of the possession of the unit. That no response was given to the complainant from the respondents resulting into increased mental harassment. That further the complainant has been charged GST and VAT but no GST credit is being offered to the flat buyers which are again in contravention to the scheme of the tax.

7. That the Complainant ultimately had to pay this unlawful demand under protest in two installments on 11.12.2015 & 08.04.2016, at a great distress under a threat of charging penal interest @18% on delayed payment. In spite of such good gesture from the complainant, the respondents did not hesitate to claim an interest on delayed payment to the tune of Rs.49,699.40/

8. That the complainant cannot wait endlessly for the completion of the unit /flat losing his confidence on the willingness of the respondents to complete the construction of the unit in all aspects.

9. That the complainant has at all times made payments against the demands of the respondents and as per payment schedule of the agreement pertaining to has flat, therefore the fraudulent act and conduct of the respondents needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter being referred as "the act"),

C. Relief sought by the complainant.

10. The complainant has sought following relief:

1) Direct the respondents to return sale consideration sum of Rs. 1,01,21,677/- 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 Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, 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 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.

- That the complainant falsely stated that the timely payments were made by the complainant as and when demanded by the respondents. The complainant made several defaults in making timely payments as a result thereof, the respondents had to issue several reminders and despite the same, complainant failed to pay the outstanding dues.
- The complainant has further concealed from the Hon'ble Authority that the respondents with a view to encourage the complainant to clear the outstanding dues „ vide emails dated 04.12.2015 and 19.10.2016 extended to the complainant , limited period 100% interest waiver offer subject to clearance of total outstanding amount by 11.12.2015 and 24.10.2016 respectively. However, the

complainant failed to avail the said offer and the same stood withdrawn by efflux of time.

- The complainant concealed the fact that no construction updates were provided by the respondents and that the project is nowhere near completion. In this context, it is submitted that the respondents have provided regular construction updates to the complainant vide emails dated 16.03.2017, 24.04.2017, 24.05.2017, 23.06.2017, 28.07.2017, 13.08.2017, 11.122017, 26.03.2018, 09.04.2018, 08.05.2018, 15.06.2018, 09.09.2018, 07.11.2018, 19.12.2018, 24.01.2019, 24.02.2019, 22.03.2019, 19.04.2019, 15.05.2019 and 23.11.2020.

12. That the project in question was launched by the respondents in August' 2012. It 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.

13. That agreements that were executed prior to implementation of the Act of 2016 and rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented FBA executed by the complainant out of his own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.

14. It is further submitted 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 complainant is 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". In this regard, the respondents reserve their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.

15. 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 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.*

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.

E. 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 .

16. 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."*

17. 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."*

18. 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. Findings on the relief sought by the complainant.

F.I Direct the respondents to return sale consideration sum of Rs. 1,01,21,677/-received by them from the complainant.

19. In the present complaint, the counsel for the complainant wishes to withdraw from the project and demanding return of the amount received by the promoter in respect of the unit with interest on

failure of the promoter 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 due date of possession as per agreement for sale as mentioned in the table above is 27.06.2016 and there is delay of 2 years 7 months 16 days on the date of filing of the complaint. The matter is covered under section 18(1) of the Act of 2016.

20. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant 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-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is 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 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.

23. The respondent-builders obtained occupation certificate and offered possession of subject unit to the complainant after filing of application by the complainant for return of the amount received by the promoters on failure of promoters 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 the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoters as the promoters fails 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. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

24. The authority hereby directs the promoter to return the amount received by him i.e. Rs. 1,01,21,677/- 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 after adjustment of payment made under subvention Scheme by the promoter, if any.

H. Directions of the authority

25. 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. 1,01,21,677/- 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 within 90 days from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017 after adjustment of payment made under subvention Scheme by the promoter, if any.

II. 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.

III. 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

26. Complaint stands disposed of.

27. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.08.2022