



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2776 of 2019</b>
<b>Date of filing:</b>	<b>13.12.2019</b>
<b>Date of first hearing:</b>	<b>08.01.2020</b>
<b>Date of decision:</b>	<b>31.01.2023</b>

Mr. Bhupesh Devgun & Mrs. Ritu Devgun , both r/o 1888/17 Govind Puri Extn  
Kalkaji New Delhi-110019

....COMPLAINANTS

VERSUS

M/s BPTP Ltd having registered office at M-11, Middle Circle, Cannought  
Place, New Delhi-110001

....RESPONDENT(S)

**CORAM:**           **Dr. Geeta Rathee Singh**  
                          **Nadim Akhtar**

**Member**  
**Member**

**Date of Hearing:** 31.01.2023

**Present:**           Mr. Bhupesh Devgun, Complainant through video  
                          conference

Mr. Hemant Saini, Counsel for the respondent.

**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 13.12.2019 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	BPTP Park Central, Sector-85, Faridabad.
2.	RERA registered/not registered	Un-registered
3.	Unit no.	Office space 107, FF
4.	Unit area	616 sq. ft.
5.	Date of booking	08.11.2010



6.	Date of allotment	26.12.2010
7.	Date of builder buyer agreement	28.12.2012
8.	Deemed date of possession	28.06.2016
9.	Basic sale price	₹23,06,304/-
10.	Amount paid by complainant	₹27,59,980/-
11.	Offer of possession	Not made

### B. FACTS OF THE COMPLAINT

3. That, the complainants had booked office space no. 107 on first floor having super area of 616 sq ft situated in respondent's project-BPTP Park Central, Sector 85, Faridabad on payment of ₹ 3,07,725/-. Complainants continued to pay the amounts as and when demanded by the respondent. Complainants requested the respondent for signing the builder buyer agreement on every payment.
4. That, Builder buyer agreement was finally executed between the complainants and respondent-developer on 28.12.2012. The complainants had paid amount of ₹ 27,59,980/- to the respondent till August 2013 against the basic sale price of ₹ 4150/- per sq. ft. The possession was to be delivered in July 2016. The respondent had collected 95 % of the amount even before starting the construction but failed to offer the possession.




5. That, on 01.06.2016, the respondent sent an email regarding delay in offer of possession and informed the complainants that possession will be offered in June 2018 and offered the complainants compensation for delay as per agreement. On 06.07.2016, again an email was received by the complainants regarding re-allotment of cheaper units at much higher prices situated at far-off places. The complainants refused the said offer of re allotment.
6. That, another e-mail dated 12.07.2016 was sent by the respondent stating that possession would not be possible before June 2018 and adequate compensation as per agreement will be given. On 17.05.2018 again an email was received wherein respondent had accepted delay on its part and requested complainants to consent for re-allotment. The complainants have attached copies of photographs of construction and have stated that even in June 2018 as well, the project was nowhere near completion and it was to take another two three years more as per status in June 2018 to complete the construction. The respondent has till date not offered any penalty and interest to the complainants. Respondent has collected enhanced EDC despite the fact that there was stay order from Hon'ble High Court in CWP No. 5835 of 2013 titled as Balwan Singh and others versus State of Haryana and others. The respondent has not deposited amount of enhanced EDC with Department of Town and Country Planning, Haryana which is illegal.



7. That, Complainants had filed a complaint bearing no. 380 of 2018 with The Haryana Real Estate Regulatory Authority, Panchkula which was withdrawn on 06.02.2019 in lieu of settlement arrived at between the parties on 04.02.2019. As per settlement deed, an alternate unit E-40-36-SF having super area of 1047 square ft situated in Park Elite Floors, Faridabad was allotted. The possession of the same was to be delivered within 7 months i.e., up to 04.08.2019 with Occupation certificate/Completion certificate. The respondent has not offered any possession till date nor has got Occupation certificate/Completion certificate for the said unit.
8. That, there is neither assurance nor any possibility that respondent will be fair to complainants in giving possession on time giving interest equitably for the delay without the RERA Authority's intervention. Hence, the present complaint.

**C. RELIEF SOUGHT**

9. The complainants in their complaint have prayed that the respondent be directed to:
- (a) The complainant should be paid interest for every month of delay, till handing over of possession, at such rate as may be prescribed (equitably) amounting to more than 4 years. Also return of the entire amount invested so far in the



alternate with interest as the case may be or may be ignored depending upon facts & circumstances of the case.

(b) The respondents failure to fulfill obligations like increment of tax liability in form of GST, VAT etc, Club Facility & other amenities be borne by respondent only.

(c) The respondent may kindly be restrained from levying any charges on complainant on any account during the pendency of this case, previous case or before like holding, maintenance, delay interest, penalties etc.

(d) The increase in area/size of unit cost be solely borne by respondent as they failed to obtain consent nor inform complainant about the change as per RERA. This is in strict defiance of Section 14 of RERA Act.

(e) The exact area increase in said unit is still not justified to complainant satisfaction for which local commissioner (LC) on courts discretion can also be appointed.

(f) Any other relief, which this authority may deem fit in the present circumstances may also be awarded to the complainant.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 01.10.2020 pleading therein:

10. That, in 2010, complainants had booked an office space in the project 'Park Central'. Office Space No.107 was allotted to the complainants on 26.12.2010. On 13.08.2018, complainants had filed a complaint bearing No. 380 of 2018 before this Hon'ble Authority. The matter was amicably settled between the parties, wherein amongst other things, a special credit of an amount of Rs.14,86,138/- and a another unit bearing No. B40-36-SF Park Elite Floors, Faridabad, Haryana ("New Unit", was allotted to the complainants. The case no. 380 of 2018 was withdrawn by the complainants. A Floor Buyer Agreement was also issued to the complainants on 22.02.2019, however complainants failed to submit the signed executed FBA. The complainants in terms of settlement deed dated 04.02.2019 had undertaken not to file a new complaint with respect to the replaced new unit. However, with utter disregard to the agreed terms of the settlement deed dated 04.02.2019, the complainants filed the present frivolous complaint. Complainants have availed a special credit of Rs.14,86,138/- and allotment of new unit No. E40-36-SF in Park Elite Floors, Faridabad in lieu of surrender of previous unit in terms of settlement deed. Post execution of settlement deed the issues and disputes with respect to previous unit stand settled between the parties. It is further stated that the complaint under reply is hit by the principles of res judicata.



11. That, construction of the project- 'Park Elite Floors' for which settlement deed dated 04.02.2019 was executed was going on in full swing and the respondent was confident to handover possession of the unit as only final finishing work is pending. However, due to sudden outbreak of COVID-19 construction came to halt. Respondent is hopeful to handover possession of the unit in question in terms of settlement deed at the earliest possible.
12. That, to ensure the completion of project and not to disturb the cash flow, the buyer be encouraged to take possession rather than refund. As far as enhanced EDC is concerned, the complainants have misled Hon'ble Court. On the issue of EEDC, respondent submits that it had raised demand of EEDC on 28.06.2012 against which the complainants had made the payments voluntarily on 12.07.2012 and 16.07.2012. Hon'ble High Court had stayed the operation of Haryana Urban Development Authority memo no. HUDA-CCF-Actt-I-2011/24224 dated 14.07.2011 in the year 2013. Since there was an ambiguity, DTCP, Haryana vide order dated 07.11.2013, directed developers not to insist upon payment of EEDC. Complainants had made the payment of EEDC in the year 2012 much before the stay order passed by Hon'ble High Court. The complainants are estopped by their own conduct act and as well as limitation from raising this issue.





13. That, the possession timelines were subject to force majeure clause and compliance of all the clauses of the buyer agreement including timely payment of all the demands raised by the respondent. The project is delayed due to payments default committed by various customers in making payment of due installment within the delivery timelines. Respondent has also offered an alternative unit on 01.06.2016 to the complainants in its another ready to move in project-‘Next Door’, however said offer was not accepted by the complainants.

**F. ARGUMENTS OF COMPLAINANTS AND LEARNED COUNSEL FOR RESPONDENT**

14. During oral arguments, complainants had insisted upon refund of paid amount with interest as respondent has miserably failed to deliver possession of originally allotted unit and even to abide by settlement deed dated 04.02.2019 entered into between the parties. He requested that his complaint be restricted to relief of refund of paid amount with interest only. In rebuttal, learned counsel for the respondent reiterated arguments as were submitted in written statement. Learned counsel for respondent further stated that respondent is ready for allotment of any other alternative unit in the completed project.

**G. JURISDICTION OF THE AUTHORITY**

15. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

### **G.1 Territorial Jurisdiction**

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

### **G.2 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;

#### **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 of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

## **H. ISSUES FOR ADJUDICATION**

16. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

## **I. FINDINGS ON THE OBJECTIONS RAISED BY RESPONDENT**

### **I.1 Objection regarding maintainability of complaint**

17. The respondent has taken a stand that present complaint is not maintainable for the reason that the complainants in terms of settlement deed dated 04.02.2019 had undertaken not to file a new complaint with respect to the replaced new unit. However, with utter disregard to the agreed terms of the settlement deed dated 04.02.2019, the complainants filed the present frivolous complaint. Complainants have availed a special credit of Rs.14,86,138/- and allotment of new unit No. E40-36-SF in Park Elite Floors, Faridabad in lieu of surrender of previous unit in terms of settlement deed. Post execution of settlement deed the issues and disputes with respect to previous unit stand settled between the parties and therefore present complaint under reply is hit by the principles of res judicata.
18. It is observed that in this case, when the respondent itself has resiled from the settlement dated 04.02.2019 arrived at between the parties and has not

offered possession to the complainants by agreed date i.e., 04.08.2019, said settlement has been rendered infructuous as necessary condition of offering possession by 04.08.2019 has not been fulfilled by the respondent. Even after August 2019, three years have passed but occupation certificate has also not even been applied for giving lawful possession to complainants. As per buyer's agreement dated 28.12.2012, deemed date of offer of possession was in July 2016, conduct of respondent, firstly, in not offering possession in due time i.e., by July 2016, and then resiling from settlement dated 04.02.2019 gives rise to a fresh cause of action. Hence, objection of respondent that complaint is not maintainable stands rejected.

**J. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT**

19. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

- (i) That the respondent was under obligation to honor the terms of builder buyer agreement dated 28.12.2012 and to deliver possession of allotted office space no. 107, FF upto the deemed date of possession i.e. July,2016. However, respondent did not offer possession to the complainants within stipulated time so the complainants had chosen to file

complaint no. 380/2018 before this Authority. Said complaint was disposed of as withdrawn vide order dated 06.02.2019 considering the fact that parties have entered into settlement deed dated 04.02.2019. In terms of said settlement deed, the respondent was bound to deliver possession of new allotted unit no. E-40-36-SF in Park Elite Floors within 7 months i.e. upto 04.08.2019. But respondent failed to abide by the terms of settlement and even today respondent is not in a position to deliver possession of said swapped unit. Complainants had paid an amount of Rs 27,59,980/- to the respondent, out of which last payment was made in August,2013 and since then complainants are waiting for possession of unit. Today, complainants have prayed for refund of paid amount because there is no hope of getting possession even in near future.

(ii) Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:



“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.*”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

20. The project-Park Central in which the complainants were originally allotted a unit office space 107 is already delayed by several years. Further, the project-Park Elite Floors in which the swapped unit no. E-40-36-SF is situated is also not complete and there is no hope of getting it complete even in near future. Therefore, Authority finds it to be fit case for allowing refund in favour of complainants in terms of RERA Act,2016. As per Section 18 of Act, interest shall be awarded at such rate

as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

**“Rule 15:** Interest payable by promoter and Allottee. [Section 19] -

An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

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.”

21. The legislature in its wisdom in the subordinate legislation under the provisions 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.

22. 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. 31.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

23. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(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-

(i) 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;

(ii) 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;

Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹27,59,980/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and



Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.60% (8.60% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.60% till the date of this order and said amount works out to ₹ 58,97,742/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 31.01.2023
1.	307725	2010-11-08	399290
2.	82000	2011-01-19	104685
3.	20000	2012-05-14	22739
4.	20000	2012-11-28	21589
5.	25000	2012-05-28	28322
6.	490000	2013-01-30	519969
7.	45000	2013-03-06	47295
8.	50000	2013-01-10	53348
9.	70000	2012-06-18	78876
10.	100000	2011-01-07	128013
11.	14000	2012-04-13	16043
12.	18000	2011-01-19	22980
13.	50000	2011-05-24	62017
14.	150000	2012-07-16	167799

15.	50000	2011-05-12	62192
16	70000	2011-03-02	88511
17	108000	2011-09-23	130131
18.	30000	2012-05-07	34170
19.	50000	2012-07-12	55991
20.	300000	2012-09-17	330110
21.	45000	2013-03-06	47295
22.	610000	2012-11-28	658469
23.	55255	2013-03-15	57928
24.	2759980		3137762
25.	Total Payable to complainant (27,59,980/- + 31,37,762)		₹ 58,97,742/-

#### K. DIRECTIONS OF THE AUTHORITY

24. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹ 58,97,742/- to the complainants.

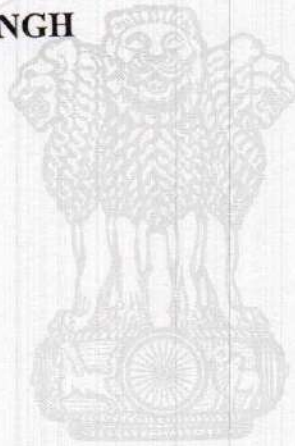
(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of

Haryana Real Estate (Regulation & Development) Rules, 2017  
failing which legal consequences would follow.

25. Respondent is directed to pay cost of Rs 10,000/- payable to Authority imposed vide order dated 08.01.2020 passed in present complaint.
26. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.

  
.....  
**Dr. GEETA RATHEE SINGH**  
[MEMBER]

  
.....  
**NADIM AKHTAR**  
[MEMBER]



सत्यमेव जयते

Panchkula