

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

**Complaint no.** : 4759 of 2021  
**Date of filing complaint** : 27.12.2021  
**First date of hearing** : 03.06.2022  
**Date of decision** : 15.12.2022

1. Mr. Goldie Arora 2. Mrs. Supreet Kaur Arora <b>Both R/O:</b> - 25/23, 2 <sup>nd</sup> floor, East Patel Nagar, New Delhi-110008.	<b>Complainants</b>
Versus	
M/s BPTP Private Limited <b>Regd. Office at:</b> - OT-14 3 <sup>rd</sup> floor, New Door Parklands, Sector-76, Faridabad-121004.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Rishi Raj Sharma	Advocate for the complainants
Sh. Venkat Rao	Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the

Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Amstoria", Sector- 102, Gurugram
2.	Nature of project	Residential floor
3.	<b>RERA registered/not registered</b>	Not Registered
4.	<b>DTPC License no.</b>	58 of 2010 dated 03.08.2010
	Validity status	02.08.2025
	Name of licensee	Shivanand Real estate Pvt. Ltd and 12 others
	Licensed area	108.07 acres
7.	Unit no.	A-135-FF, first floor [As per page no. 37 of complaint]
8.	Unit measuring	1999 sq. ft.

		[As per page no. 37 of complaint]
9.	Provisional allotment letter	12.12.2011 (As per page no. 13 of complaint)
9.	Date of execution of Floor agreement buyer's	18.05.2012 (Page no. 28 of complaint)
10.	Possession clause	<p><b>5. Possession</b></p> <p>5.1 Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The</p>

		Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.
12.	Due date of possession	18.05.2014 (calculated from the execution of BBA)
13.	Basic Sale Price	Rs. 1,02,78,699/- [As per page no. 37 of complaint]
14.	Total amount paid by the complainants	Rs. 83,82,114/- [As alleged by the complainants]
15.	Occupation certificate dated	Not obtained
16.	Offer of possession	Not offered

**B. Facts of the complaint**

3. That complainants booked a residential apartment in above mentioned project and were allotted one residential unit bearing no. A-135-FF, area admeasuring 1999 sq. ft. in "Amstoria" at Sector 102, Gurugram, Haryana. That the basic sale price of the said property was Rs. 98,67,550/- out of which the complainants had paid an

amount of Rs. 83,82,114/- i.e. 84.94% towards the total basic sale price.

4. Additionally, the complainants have paid a sum of Rs. 2,06,180/- and Rs. 4,79,377/- towards club membership charges and development charges, respectively. Further, a sum of Rs. 92,460/- has been paid towards taxes / VAT

BRIEF RELEVANT DETAILS	
Unit No.	A-135 - FF
Project Name	AMSTORIA
Location	Sector 102, Gurugram, Haryana
Type	Residential Floor
Plot Size	303 sq. yds.
Built-Up Area	1999 sq. ft.
Booking Date	12.12.2011
Allotment Letter Date	04.01.2012
Floor Buyer's Agreement Dt.	18.05.2012
Addendum to FBA Dt.	24.05.2013
Payment Plan	Construction Linked
Booking Amount Paid	Rs. 9,87,000 on 13.12.2011
Total Basic Sale Price	Rs. 98,67,550/- (excluding taxes)
Payment Called till Date	Rs. 83,82,114/-
Payment Made till Date	Rs. 83,82,114/- (paid)
Last Payment Instalment Dt.	Rs. 10.04.2013
Club Membership Charges	Rs. 2,06,180/- (paid)
Development Charges	Rs. 4,79,377/- (paid)
Taxes / VAT	Rs. 92,460/- (paid)

5. That as per buyer's agreement dated 18.05.2012 the respondent company assured the complainants that the construction of the said unit will be completed within a period of 24 months from the date of sanctioning of the building plan or execution of the agreement,

whichever is later (hereinafter referred to as "Commitment Period") plus 180 days after the expiry of said commitment period to allow filing and pursuing of occupancy certificate, etc. from DTCP under the Act in respect of the entire colony. Thus, the Possession was proposed to be offered till May 2014, i.e. 24 months from date of execution of the agreement dated 18.05.2014.

6. The complainants have been orally informed that construction of the booked apartment/floor viz. A-135-FF will take some more time, and in the alternative the complainants were offered another apartments/floors viz. A-148-FF, A-86-SF, A-109-FF, D-41-FF at a higher cost price and without any adjustment/discount for the delay compensation, and at unfavourable location in comparison to the booked - apartment/floor viz. A-135-FF. The respondent-builder demanded total Rs. 47,43,481.38/- through emails.
7. The complainants had through their counsel sent a legal notice dated 26.03.2021 to the respondent highlighting the concerns and seeking possession of the apartment/floor post-completion of the construction and finishing work, along with delay compensation as per the terms of buyer's agreement dated 18.05.2012 to the tune of Rs. 41,97,900/-. The respondent did not respond to the said legal notice.
8. The complainants again on several occasions contacted the representatives and employees of the respondent via phone/email and also made personal visits to the office of the respondent to follow-up and requested for an amicable solution. The respondent is

unwilling to take any steps for construction of the booked apartment/unit viz. A-135-FF and is forcing the complainants to either opt for another apartment/floor at a higher cost and without any adjustment/discount for the delay compensation, or seek refund of the money paid without interest / compensation. Thus, there is no intention on part of the respondent to perform its promised obligations under the floor buyer's agreement and there is no interest to resolve the issues/concerns of the complainants.

9. Subsequently, the complainants vide email dated 10.11.2021 have terminated the buyer's agreement dated 18.05.2012 due to the lapses on part of the respondent, and have sought refund of the entire amount paid along with interest @18% p.a. from the promised date of possession as per floor buyer's agreement i.e. 17.11.2014 till date. The respondent did not respond to this email.
10. That since the respondent failed to fulfill its promise to deliver the project to the complainants are entitled for refund of their money invested in the above project along with prescribed rate of interest from the date of payment till realization from respondent/opposite party. The respondent is also liable to compensate the complainants for the cheating and harassment done by them.

**C. Relief sought by the complainants:**

The complainants have sought the following relief:

- i) refund the amount of Rs. 83,82,114/- being the principal amount paid by the complainants to the respondent against total basic sale consideration of the

- apartment/floor i.e. unit no. A-135-FF, AMSTORIA, Sector-102, Gurugram, Haryana, along with interest @18% p.a. from the promised date of possession as per floor buyer's agreement i.e. 17.11.2014 till date.
- ii) Refund the amount of Rs. 6,85,557/- , being the sum paid by the complainants to the respondent against club membership charges and development charges of the apartment/floor i.e. unit no. A-135-FF, AMSTORIA, Sector-102, Gurugram, Haryana, along with interest @18% p.a. from the promised date of possession as per floor buyer's agreement i.e. 17.11.2014 till date.
- iii) Refund the amount of Rs. 92,460/- being the sum paid by the complainants to the respondent against taxes & VAT of the apartment/floor i.e. unit no. A-135-FF, AMSTORIA, Sector-102, Gurugram, Haryana, along with interest @18% p.a. from the promised date of possession as per buyer's agreement i.e. 17.11.2014 till date.
- iv) Pay the compensation of Rs.5,00,000/- for the mental agony and financial loss suffered by the complainants.
- v) Pay Rs.1,00,000/- to the complainants on account of deficiency in the services of the respondent and also towards the litigation charges.

**D. Reply by the respondent**



The respondent by way of written reply made the following submissions.

11. It is submitted that the complainants have approached this Hon'ble Authority for redressal of the 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 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.

- a) That the complainants have concealed the fact of utmost importance that the complainants have given a duly notarized undertaking dated 09.05.2012 (hereinafter referred to as the "Undertaking") to the respondents and same is under the signatures of the complainants. In view of Clause (i) of the Undertaking the complainants had agreed to accept the alternative plot of changed area at the location as may be offered/ demarcated by the respondents in the modified layout of the colony. Clause (i) of the said undertaking is reproduced herein for the ready reference of this Hon'ble Authority/ Office:



*"Clause (i): That we understand that the Plot bearing no. A-135-FF, in block A admeasuring 303 sq. yds. Approx. with built up area admeasuring 1,999 sq. ft. approx. in the Licensed colony "Amstoria" situated at Gurgaon, Haryana, is being allotted to Us by M/s BPTP Ltd. "Company", on the basis of the tentative layout/ Building plan approved by the DTCP Haryana/ Competent Authority as on date and We hereby undertake that should there be any modification in the layout plan of the said colony of the project in future for any reason whatsoever, then we shall accept such alternative plot of changed area at the location as may be offered/ demarcated by the Company for Us in the modified Layout of the colony."*

- b) That the complainants have further concealed from this Hon'ble Authority that the respondent being a customer centric organization vide demand letters as well as numerous emails has kept updated and informed the complainants about the milestone achieved and progress in the developmental aspects of the project. Therefore, it is evident that the respondent has always acted bonafide and thus, has always maintained a transparency in reference to the project. In addition to updating the complainants, the respondent on numerous occasions, on each and every issue(s) and/or query (ies) put forth by the complainants apropos the unit in question has always provided steady and efficient assistance. Despite the several efforts made by

the respondent to attend to the queries of the complainants to their complete satisfaction, the complainants erroneously proceeded to file the present vexatious complaint before the Authority against the respondent.

12. It is submitted that the respondent being the customer centric organization on various occasions had sent construction update emails to the complainants with respect to the project and on each specific occasion has addressed the grievances of the complainants. It is further submitted the respondent in order to amicably resolve the grievances being raised by the complainants *via* email(s) dated 30.07.2021, 09.08.2021, 23.09.2021 and 10.11.2021 duly sent an emails dated 03.08.2021, 09.08.2021, 11.11.2021, 25.03.2022 and 28.03.2022 respectively wherein the respondent has offered various alternate units to the complainants in the Project "AMSTORIA" itself and other projects being developed by the respondent namely "PEDESTAL", "SPACIO" and "TERRA". However, it is the complainants who never step forward for the amicable settlement of the issues and acceptance of the alternate units and at this juncture are blowing hot and cold *qua* the respondent to tarnish their hard earn goodwill for the reasons best known to them.
13. It is further submitted that having agreed to the above, at the stage of entering into the FBA, and raising vague allegations and seeking baseless reliefs beyond the ambit of the FBA, the complainants are 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 respondent reserves their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.

14. All other averments made in the complaint were denied in toto.
15. 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**

16. The respondent has 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**

17. 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**

18. 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 promoter 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 objections raised by the respondent.**

**F.1 Objection regarding the complainants being investor.**

19. It is pleaded on behalf of respondent that complainants are an investor and not consumer. So, she is entitled to any protection under the Act and the complaint filed by her under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle

of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and the same is reproduced below for ready reference:

*"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."*

20. In view of above-mentioned definition of allottee as well as the terms and conditions of the flat buyer's agreement executed between the parties, it is crystal clear that the complainants are an allottees as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal

No.0006000000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected

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

**E.1 Direct the respondent to refund the entire amount along with interest.**

21. Keeping in view the fact that the allottee complainants wish 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 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 18.05.2014 and there is delay of 7 years 7 months 09 days on the date of filing of the complaint.
22. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. 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.....”*

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 promoter is 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 promoter is 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 them in respect of the unit with interest at such rate as may be prescribed.
25. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 83,82,114/- with interest at the rate of 10.35% (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*.

**E.II cost of litigation & mental harassment**

26. The complainants in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to

be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**F. Directions of the Authority:**

27. 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/promoter is directed to refund the entire amount of Rs. 83,82,114/- paid by the complainants along with prescribed rate of interest @ 10.35% p.a. from the date of each payment till the actual date of refund of the deposited amount as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- ii) The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the

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

iii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

28. Complaint stands disposed of.

29. File be consigned to the Registry.

  
(Sanjeev Kumar Arora)  
Member

  
सत्यमेव जयते

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.12.2022

**HARERA**  
**GURUGRAM**