

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

Complaint no.	:	1812 of 2018
First date of hearing:		19.03.2019
Date of decision	:	24.01.2023

Rakesh Sharma R/o: House No. 467/5, Sector-5, Gurugram, Haryana - 122001.	Complainant
Versus	
1. M/s BPTP Limited. 2. M/s Countrywide Promoters Pvt. Ltd. Regd. Office at: M-11, Middle Circle, Connaught Circus, New Delhi-110001.	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Ms. Shivali	Advocate for the complainant
Sh. Harshit Batra	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-25-1401, Tower 25 [As per page no. 23 of complaint]
8.	Unit measuring	1691 sq. ft. [As per page no. 23 of complaint]
9.	Date of execution of Flat buyer's agreement	Not executed
10	Allotment Letter	04.01.2013

		(page no. 24 of complaint)
11.	Possession clause (Taken from the similar case of same project)	<p>5. Possession</p> <p>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.</p> <p>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.</p>
12.	Due date of possession	Cannot be ascertained
13.	Total sale consideration	Rs. 1,03,78,092/- [as per page no. 25 of complaint]



14.	Total amount paid by the complainant	Rs. 18,12,982/- (As alleged by the complainant)
15	Reminders Letter	07.02.2013, 11.03.2013, 10.04.2013 and 13.05.2013
15	Termination Letter	03.07.2013 (inadvertently mentioned 03.07.2017 in proceeding of day dated 24.01.2023) (Page no. 41 of respondent)
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 21/08/2012, the complainant booked a unit bearing T-25-1401, tower 25 admeasuring 1691 sq. ft in BPTP Terra, sector - 37D, Gurugram and paid Rs. 600,000/- as booking amount against the basic sale price of Rs. 88,77,750/-.
4. The complainant submitted that the booking was made in his favour having a basic price of Rs.88,77,750/- for a unit measuring about 1691 sq. ft. plus other charges. The respondents vide their letter dated 05.10.2012 intimated the complainant to pay the second instalment as per the payment plant, i.e., which was to be made within 45 days of the booking. The payment of Rs.12,12,982/- was made by the complainant as per the demand raised by the respondents and was acknowledged by them vide receipt dated 30.10.2012.



5. The complainant submitted that as per the flat buyer's agreement, the respondent had the arbitrary power to levy an interest @18% or more on the due payments. Along with an explanation on that, the complainant wanted some more details on the stage of development reached by the respondents as the project site was lying dormant after more than a year or so of making the said application in 2012. Thus, the complainant requested the respondent a number of times personally and orally to intimate him of the date of delivery as well as the initiation and completion of the project work.
6. The complainant submitted that no details were offered by the respondents in spite of the repeated requests made by him amounting to emotional harassment as he has already paid considerable amount of money towards the said allotment. As a result of the silence of the respondents on the inquiries being made by the complainant, the flat buyer's agreement could not be executed between the parties.
7. The complainant submitted that a third payment request was made by the respondents on 17.01.2013 making a demand of Rs.9,06,492/-. He again inquired about the status of the queries to the respondent but received no response. The complainant further asked the reason as to why the project site was lying dormant for more than a year and no development had taken place on it.
8. The complainant submitted that the allotment was unilaterally cancelled by the respondents vide their letter dated 03.07.2013 and demand a of Rs.9,06,492/- was also made while cancelling the unit. The



notice for demand and cancellation manifests the mala fide intentions of the respondents to dupe the complainant of his hard-earned money by grabbing his money as well as cancelling his allotment.

9. The complainant submitted that on 18.07.2013, he issued cheque no. 516176 of Rs.9,06,492/- in favour of respondents which was misplaced by the courier and hence, payment was not made. The complainant till date has made a payment of Rs.18,12,982/- to the respondent.
10. The complainant submitted that at the time of the booking, the respondents had promised to deliver the unit within 42 months but till date, they have not completed the unit. Moreover, no flat buyer's agreement was executed by the respondents which is also mandatory under the RERA provisions.
11. The complainant submitted that in above circumstances, it is absolutely just and necessary to direct the respondents to refund the amount of Rs.18,12,982/- paid by him till date along with a prescribed rate of interest from the date of payment till the date of actual realization.

C. Relief sought by the complainants:

The complainant has sought following relief(s).

- i. To get refund the amount paid by the complainant along with interest.

D. Reply by the respondents:

12. 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) The respondents submitted that the complainant has been a habitual defaulter in making payments of the instalments as and when demanded by them in terms of the agreed payment plan. The complainant made several defaults in making timely payments as a result thereof, the respondents had to issue several reminder letters for payment of the outstanding amount and were compelled to issue a final and last opportunity demand. notice dated 13.05.2013 for payment of total outstanding dues of Rs. 9,51,813/- . However, the complainant did not pay any heed to the same. Therefore, respondents were left with no other option but to issue termination letter dated 03.07.2013 whereby the unit in question stood terminated due to constant defaults in timely payments by the complainant and due to non-compliance of the terms of the application for allotment agreed upon by both the parties.

- ii) The respondents submitted that the respondents vide letter dated 19.02.2013 shared 2 copies of the flat buyer's agreement with the complainant and requested him to sign the flat buyer's agreement and return the same within 30 days from the date of the letter. However, the complainant failed to sign the same and due to his default, the flat buyer's agreement could not be executed.
- iii) The respondents submitted that the complainant has concealed the fact that he himself committed defaults in making timely payments of various instalments within the stipulated time despite having clearly agreed that payment is the essence of the agreement between the parties as per clause C(10) of the application for allotment form. The respondents vide email dated 05.10.2016, as a goodwill gesture requested the complainant to remit his outstanding dues and offered a onetime limited offer to restore the terminated unit by remitting the total dues along with applicable interest within the time of 10 days. However, the complainant despite the said offer choose not to make the said payment and failed to pay the outstanding dues.

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

13. 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 has been huge defaults in making payments of various instalments by large number of applicants.
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.

D. Jurisdiction of the authority

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

D.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.

D.II Subject-matter jurisdiction

16. 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.

17. 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.
18. 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."

19. 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)**, 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 refund the entire amount paid by the complainant along with prescribed interests.

20. The complainant was allotted unit no T25-1401, 8th floor in tower 25 in the project "Terra" by the respondents for a total consideration of Rs. Rs. 1,03,78,092/-and he paid a sum of Rs. 18,12,982/-which is approx. 17.61% of the total sale consideration. The respondents had sent



reminder letters dated 07.02.2013, 11.03.2013, 10.04.2013 and 13.05.2013 to make payment of the outstanding amount. The complainant continued with the default and failed to make payment even after receipt of final reminder letter. It is pertinent to mention here that the respondents vide email dated 05.10.2016 and as a goodwill gesture, requested the complainant to remit his outstanding dues and offered a onetime limited offer to restore the terminated unit by remitting the total dues along with applicable interest within the time of 10 days but he failed to do so.

21. It is pertinent to mention here that the allotment of the complainant was terminated by the respondents in terms of the application for allotment on 03.07.2013 on account of repeated defaults in making payment in term of the agreed payment plan and the complainant filed this present complaint after a time span of more than 5 years and hence is barred by limitation. But the promoters were required to refund the balance amount as per applicable cancellation clause of the buyer agreement. The balance amount has not been refunded which is a subsisting obligation of the promoter as per the allotment application.
22. It is observed that the respondent has raised various demand letters to the complainants and as per section 19 (6) & (7) of Act of 2016, the allottees were under obligation to make timely payment as per payment plan towards consideration of the allotted unit. At this stage of time where sufficient time and opportunity has been given to the complainants to make a payment towards consideration of allotted unit,



it would be violation of section 19 (6) & (7) of Act of 2016. As per section 11(5) of Act, such cancellation has been made in accordance with the terms and conditions of the allotment.

23. The unit in question was allotted to the complainants on 04.01.2013 which was prior to coming of Act of 2016. So, the authority would calculate the earnest money according to the application for provisional allotment, which is 15% of the total basic sale consideration as per clause 5 of the application. A bare perusal of clause 5 of allotment letter makes it clear that 15% of total sale consideration shall constitute the earnest money. The authority observes that the complainant is not entitled to refund the entire amount paid by him as due to their own defaults, and the unit has been cancelled by the respondent after issuing proper reminders. Therefore, the cancellation of the allotted unit by the respondent is valid but the respondent has contravened the provision of sec 11(5) of the Act and illegally held the monies of the complainants. Therefore, the respondents directed to return the money after deducting 15% earnest money of the total sale consideration as per allotment letter of the complainants over and above earnest money, along with interest @10.60% (MCLR+2%) from the date of cancellation till its realization.

24. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the rate of 18% p.a. However, allottee intend to withdraw from the project and are seeking refund of the amount paid by them 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.

25. 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.
26. 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., 24.01.2023 is **8.60%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%**.
27. 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 is established. As such, the complainant is entitled to refund of the amount deposited after deducting 15% of the total sale consideration of the unit being earnest money as per condition of allotment in year 2013 along with prescribed rate of interest i.e., @ 10.60% p.a. from the date of cancellation i.e. 03.07.2013 till the date of realization.

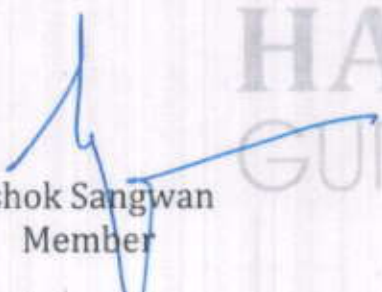
H. Directions of the authority

28. 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 respondents are directed to refund the balance amount , if any after deducting 15% earnest money of the total sale consideration alongwith interest at the rate of 10.60 % p.a. from the date of cancellation i.e. 03.07.2013 till the actual date of refund of that amount
- 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.

29. Complaint stands disposed of.

30. File be consigned to registry.



Ashok Sangwan
Member

Dated: 24.01.2023



Vijay Kumar Goyal
Member