

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

Complaint no. : 1809 of 2018
Date of filing complaint : 04.12.2018
First date of hearing : 02.04.2019
Date of Pronouncement : 23.02.2023
:

Abha Sharma C/O: - L-49d, Block-L, Saket, New Delhi.	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 Sanjeev Kumar Arora	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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 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-24-801, Tower 24

		[As per page no. 30 of complaint]
8.	Unit measuring	1998 sq. ft. [As per page no. 30 of complaint]
9.	Date of execution of Flat buyer's agreement	Not executed
10	Allotment Letter	27.12.2012 (Page no. 30 of complaint)
11.	Possession clause	<p>5. Possession</p> <p>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the 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</p>

		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	N/A
13.	Total consideration sale	Rs. 1,21,62,376/- [as alleged by complainant as per payment plan]
14.	Total amount paid by the complainant	Rs. 21,42,128/- (As alleged by the complainant)
15.	Reminder Letters	07.02.2013, 11.03.2013 and 13.05.2013 and final notice 25.06.2013
15	Termination Letter	29.07.2013
15.	Occupation certificate dated	not obtained
16.	Offer of possession	not offered

B. Facts of the complaint

3. That the complainant was allotted unit no. T-24-801 in the project "Terra" at sector 37D, Gurugram, Haryana (the "project") and hence, is an allottee under section 2(d) of the Real Estate Act, 2016.
4. That the respondents vide their letter dated 26.10.2012 informed the complainant of confirmation of the unit. It is to be noted that the details of the unit allotted by the respondents to the complainant was unit no. 801, floor 8, tower 24.
5. That the allotment was then unilaterally cancelled by the respondents vide their letter dated 29.07.2013. The respondents have unreasonably also made a final demand of Rs. 12,54,299.25/- to the complainant while cancelling her allotment. The notice for demand and cancellation manifests the malafide intentions of the respondents to dupe the complainant of her hard-earned money.
6. That the malafide intentions of the respondents are manifested by the fact that there are still outstanding dues towards the said allotment. Such arbitrary and unilateral behaviour of the respondents have constrained the complainant to file the present complaint for the refund of her paid-up money along with compensation at a prescribed rate of interest.
7. It is submitted that in above circumstances, it is absolutely just and necessary that the Authority be pleased to direct the respondents to refund the amount of 21,42,128/- paid by the complainant along with prescribed rate of interest.

C. Relief sought by the complainant.

8. The complainant has sought following relief:

- (i) Direct the respondents to refund the entire amount paid by the complainant at the prescribed rate of interest.
- (ii) Direct the respondents to pay cost of Rs. 1,00,000/- towards the cost of litigation.

D. Reply by the respondents.

9. It is submitted that the respondents had diligently applied for registration of the project in question i.e., "Terra" located at sector 37D, Gurugram including towers-T-20 to T-25 & EWS and accordingly, registration certificate No. 299 of 2017 dated 13.10.2017 was issued by this Hon'ble Authority.
10. That the complainant 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 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 tantamounts 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 payments were stopped due to dormant stage of the project. However, as detailed in the reply to list of dates, it is

submitted that 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 25.06.2013. 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 29.07.2013 and whereby the unit in question stood terminated due to constant defaults in timely payments by the complainant.

- That the complainant concealed the fact that respondents adjusted Rs.99,900/- as discount in her account.
- The complainant at the stage of booking availed BSP discount of Rs.1,04,895/-.

From the above, it is very well established, that the complainant has approached this Hon'ble Authority with unclean hands by 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 herself at the expense of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law.

11. It is submitted that the allotment/booking was terminated in terms of the application for allotment on 29.07.2013 on account of repeated defaults on the part of the complainant in making payment of the installments demanded by the respondents in terms of the agreed payment schedule. It is therefore submitted that upon termination of the allotment of the unit of the complainant, there exists no subsisting relationship between the complainant and the respondents. Therefore, filing of complaint before the authority after a time span of more than 5 is years bared by limitation and therefore, the complaint warrants dismissal without any further adjudication.
12. It is pertinent to point out that respondents several times requested the complainant to visit the office to amicably resolve the matter but she never bothered to visit respondent's office. As per clause (s) of the booking form /application for allotment also states that the complainant "shall approach" the company for refund and return the original payment receipts and allotment letter only then the respondents shall refund the balance amount, if any without any interest within 120 days from the date of sale of the unit by company to any third party. Therefore, it is the respondents who have suffered huge losses due to callousness of the complainant.
13. All other averments made in the complaint were denied in toto.
14. 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

15. 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

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

E. II Subject-matter jurisdiction

17. 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.

18. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief:

G.I Direct the respondents to refund the entire amount along with interest

19. The complainant was allotted unit no T24-801, 8th floor in tower 24 in the project "Terra" by the respondent-builders for a total consideration of Rs. 1,21,62,376/- and he paid a sum of Rs. 21,42,128/- which is approx. 17.61% of the total sale consideration. The respondents had sent reminder letters dated 07.02.2013, 11.03.2013 and 13.05.2013 and final notice 25.06.2013 to make payment of the outstanding amount. The complainant continued with their default and again failed to make payment even after receipt of final reminder letter.
20. 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 29.07.2013 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 which is barred by limitation. But the promoters were required to refund the balance amount as per applicable cancellation clause of the builder buyer agreement. The balance amount has not been refunded which is a subsisting obligation of the promoter as per the allotment application.

21. 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.
22. The unit in question was allotted to the complainant on 27.12.2012 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 are directed to return the money after deducting 15% earnest money of the total sale consideration as per allotment letter of the complainant along with prescribed rate of interest @10.60% (MCLR+2%) from the date of cancellation till its realization.

- 23. Admissibility of refund at prescribed rate of interest:** The complainant is seeking refund amount at the prescribed rate of interest on the amount already paid by her. However, allottee intend to withdraw from the project and are seeking refund of the amount paid by her 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.

- 24.** 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.

25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

26. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(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— 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.

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;"

27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

G.I. Cost of Litigation

28. The complainant 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 complainant may approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

29. 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 after deducting earnest money i.e., 15% of sale consideration amount as per provisional allotment letter dated 27.12.2012 alongwith interest on such balance amount at the rate of 10.70 % p.a. from the date of cancellation i.e., 29.07.2013 till the actual date of realization of such 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.

30. Complaint stands disposed of.

31. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.02.2023



HARERA
GURUGRAM