

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

Complaint no. : 5197 of 2021
Date of filing complaint : 11.01.2022
Date of decision : 24.03.2023

Amit Seth R/O: - flat no. B60, Plot no. 17, Aakash Ganga Apartment, Dwarka, Sector-6, South West Delhi.	Complainant
Versus	
1. M/s BPTP Limited 2. Country Wide Promoters Regd. Office at: - M-11, Middle Circle, Connaught Circus, New elhi-110001.	Respondents

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Gulab Singh Garodia	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- 37-D, 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-21-1402, Tower 21 [As per page no. 62 of reply]

8.	Unit measuring	1691 sq. ft. [As per page no. 62 of reply]
9.	Date of execution of Flat buyer's agreement	07.01.2013 (As per page no. 56 of reply)
10	Date of building plan	21.09.2012
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 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</p>



		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	07.07.2016 (calculated from the date of execution of buyers agreement)
13.	Basic Sale Price	Rs. 88,77,750/- [as per page no. 63 of reply]
14.	Total amount paid by the complainant	Rs. 1,05,22,019/- (As per page no. 114 of reply)
15.	Occupation certificate dated	09.12.2021
16.	Offer of possession	11.12.2021 (As per page no. 112 of reply)
17.	Grace period	In the present case, the promoter is seeking a grace period of 180 days for finishing work and filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 09.12.2021 it is implied that the promoter applied for occupation certificate on 28.06.2019 which is later than 180 days from the due date of possession i.e., 07.07.2016. The clause clearly implies that the grace period is asked for filing and pursuing occupation certificate,

therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days, he does not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 07.07.2016

B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainant booked a unit/floor with the respondent company project i.e. 'TERRA' in Sector-37C, Gurgaon and on payment of Rs.6 lac, was allotted a unit bearing no. T21-1402, Sector-37D, Gurugram, having an area measuring 1691 sq. ft. on Fourteenth Floor.
4. That apart from issuing a payment receipt on different dates, acknowledging the receipt of amount of Rs. 1,05,22,019/-, the respondent company also issued a allotment letter dated 07.12.2012 carrying the details of unit allotted and also the details of amount to be deposited by the complainant from time to time as per payment plan opted by him.
5. That a flat buyer agreement w.r.t the allotted unit was executed between the parties on 07.01.2013 setting out the terms and conditions of allotment, sale consideration, the dimensions of the unit, payment plan and other particulars. The due date for the completion of the project and offer of possession of the allotted unit was fixed as 07.07.2016.

6. That the complainant without making any kind of delay always deposited the amount as per the payment plan opted by him immediately on receipt of letters from the respondent company. The stamp duty + registration charges & administrative charges as mentioned in the payment plan are liable to be payable by the complainant and that too at the time of offer of possession.
7. That from the above said timely payment opted by the complainant with the respondent leaves no iota of doubt that he has been very sincere and honest while complying the terms and conditions of the letter of allotment dated 07.12.2012 as well as of buyer's agreement dated 13.08.2012. There was reasons on the part of the complainants not to deposit the remaining amount as the same was agreed and settled to be payable at the time of offer of possession of the said unit by the respondent.
8. That instead of admitting the fault/negligence on account of offering possession of the said unit without being fit for living, respondents kept on issuing reminders for illegal demand regularly, they crossed all the limits by keeping aside all the provisions of law of land and without having any fear of law of land, they raised illegal demands from the complainant.
9. That in light of the above stated facts and circumstances, the complainant is eligible for payment of interest in terms of section 18 of RERA. The said interest is payable with the offer of possession and ought to have been adjusted with the last demand issued with the offer of possession. The

interest is, therefore, payable until the date it is actually paid to the complainant.

C. Relief sought by the complainant:

(i) Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.

(ii) Cost of litigation.

10. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

The respondents have contested the complaint on the following grounds:

11. It is submitted that the relief(s) sought by the complainant are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. The complainant entered into the said agreement with the respondent with open eyes and is bound by the same. That the relief(s) sought by the complainants travel way beyond the four walls of the agreement duly executed between the parties. The complainants while entering into the agreement accepted and is bound by each and every clause of the said agreement.

12. The detailed relief claimed by the complainant goes beyond the jurisdiction of hon'ble authority under the real estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainants.
13. It is pertinent to mention herein that the building plans were sanctioned on 21.09.2012, whereas the FBA was executed on 07.01.2013. Therefore, in view of the clause 5.1 r/w Clause 1.6 r/w clause 10 of the agreement, the due date of possession arrives out to be 29.01.2017 i.e., 42 months from the date of execution of the FBA in addition to further grace period of 180 days, which is further subject to force majeure.
14. That the construction of the project was effected on account of the NGT order prohibiting construction (structural) activities of any kind in the entire NCR by any person, private or government authority. It is submitted that vide its order, NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban, it took some time for mobilization of the work by various agencies employed with the respondent.
15. Thereafter, the Hon'ble Supreme Court of India on 04/11/2019, in case of M.C. Mehta v. Union of India banned all the construction activities. The said ban was partially lifted on 09/12/2019 whereby relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm and whereas the complete ban was lifted by the Hon'ble Apex Court on 14/02/2020. It is imperative to mention herein

that the construction of the project was going on in full swing, however, the changed norms for water usage, non-permitting construction after sunset, disallowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity crunch, non-funding of real estate projects and delay in payment of installments by customers etc. were the reasons for delay in construction and after that Government took long time in granting necessary approvals owing to its cumbersome process. Furthermore, the construction of the unit was going on in full swing and the respondent was confident to handover possession of the units in question. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site. It was communicated to the complainants vide email dated 26.02.2020 that the construction was nearing completion and the respondents were confident to handover possession of the unit in question by March 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), construction came to a halt and it took some time to get the labour mobilized at the site.

16. It is humbly submitted that despite all aforesaid force majeure circumstances, the respondents duly completed the construction of project as well as of the tower in which the unit is located has been completed and has offered possession of the said unit on 11.12.2021
17. All other averments made in the complaint were denied in toto.
18. 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 those undisputed documents and submissions 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.

F. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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.

F. II Subject matter jurisdiction

19. 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)(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.

20. 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.

E.I Objection regarding force majeure conditions:

21. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project, but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 07.01.2013 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 07.07.2016. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing

on the record to show that the respondent has even made an application for grant of occupation certificate during the extended period. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

22. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 observed as under-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

23. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 07.07.2016 and are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an

excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

H. Findings on the relief sought by the complainants.

24. Relief sought by the complainant: The complainant sought following relief(s):

- i. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.

Delay Possession Charges

25. The complainant booked one 4 BHK flat admeasuring 1691 sq. ft. bearing flat No. T-21-1402, Tower 21 and paid till date Rs. 1,05,22,019/- against the basic sale consideration of Rs. 88,77,750/--. A flat buyer agreement w.r.t the allotted unit was executed between the parties on 07.01.2013. The due date for the completion of the project and offer of possession of the allotted unit was fixed as 07.07.2016.
26. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

27. Further, Clause 5 read with clause 1.6 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"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..

28. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such

conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

29. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
30. **Admissibility of grace period:** In the present case, the promoter is seeking a grace period of 180 days for finishing work and filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 09.12.2021 it is implied that the promoter applied for occupation certificate on 28.06.2019 which is later than 180 days from the due date of possession i.e., 07.07.2016.

The clause clearly implies that the grace period is asked for filing and pursuing occupation certificate. But as the promoter applied for the occupation certificate much later than the statutory period of 180 days, he does not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 07.07.2016.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed 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.

32. 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.

33. 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., 24.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
34. The definition of term 'interest' as defined under section 2(za) of the Act provides that 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 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—

(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;"

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

Litigation Cost:

36. 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 is advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the authority

37. 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):

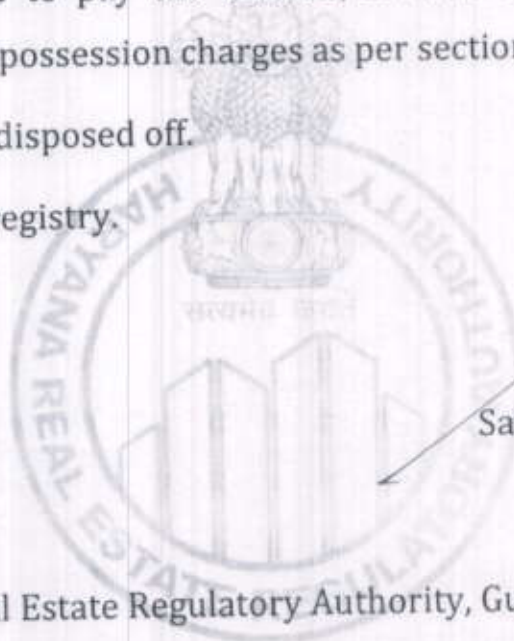
- i. The respondents are directed to pay interest on the paid-up amount at the prescribed rate of 10.70 % p.a. for every month of delay from the due date of possession i.e., 07.07.20016 till the date of offer of possession i.e., 11.12.2021 plus two months i.e., 11.02.2022 to the complainant.
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottee within a

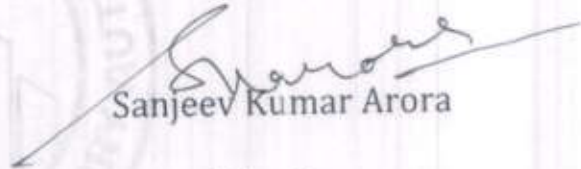
period of 90 days from date of this order as per rule 16(2) of the rules.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

38. The complaint stand disposed off.

39. File be consigned to registry.




Sanjeev Kumar Arora

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.03.2023

HARERA
GURUGRAM