

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

Complaint no. : 1613 of 2018
Date of filing complaint : 31.10.2018
Date of decision : 22.03.2023

Jasbir Singh Rikhi & Gurpreet Kaur Rikhi R/O: - 224(RPS DDA FLATS) Shiekh Sarai, Phase-01, New Delhi.	Complainants
Versus	
1. M/s BPTP Limited 2. Country Wide Promoters Regd. Office at: - M-11, Middle Circle, Connaught Circus, New Delhi-110001.	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Shimpy Arman Sharma	Advocate for the complainants
Sh. Harshit Batra	Advocate for the respondents

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	"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-25-403, Tower 25 [As per page no. 48 of complaint]
8.	Unit measuring	1998 sq. ft. [As per page no. 48 of complaint]
9.	Date of execution of Flat buyer's agreement	13.02.2013 (Page no. 42 of complaint)
10.	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</p>

		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	13.08.2016 (Calculated from the execution of buyer's agreement)
13.	Basic sale price	Rs. 1,04,89,500/- [As per BBA on page no. 49 of complaint]
14.	Total amount paid by the complainant	Rs.1,31,23,630/- (As alleged by the complainant)
15.	Occupation certificate dated	09.12.2021
16.	Offer of possession	15.12.2021

B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainants booked a residential flat bearing unit No. T25-403 admeasuring 1,998 sq. ft. situated at the respondent's project BPTP namely "TERRA" in Sector-37D, GURUGRAM, Haryana.
4. That the booking amount of Rs.7,00,000/- was paid as advance by the complainants vide cheque no.499770 on date 24.08.2012 drawn at PNB,

and the respondents accepted the payment in the name of "M/S BPTP Limited" toward the booking amount.

5. That an allotment letter dated 07.12.2012 for the unit bearing number T25-403 TERRA" was issued by the respondents on their letter head bearing logos of "TERRA" and BPTP.
6. That on 13.2.2013, a flat buyers' agreement executed between the parties. As per flat buyer's agreement, the complainants have applied for purchase of unit (allotment) in above mentioned group housing towers as terra on 24/08/2012 and as per clause 1.6 of the flat buyer's agreement the seller was to offer the possession of the fully complete unit to purchaser within 42 months from the date of flat buyer's agreement, but the possession has not yet been delivered. Despite the fact that the respondents, repeated and un-genuine demands for payment. it is pertinent to mention that complainants were not liable to pay any amount to the respondents as all the dues were cleared before the said demands were made.
7. That since it was time linked payment plan, therefore, the complainants continued to make the payments towards the sale consideration as per the demands raised by respondents from time to time. Whenever there was delay, the respondents charged the interest @18% per annum over the delayed payments and the same is also reflected in the statement of account.
8. That above said flat was sold to the complainants at an exorbitant price despite the fact that the actual price of the flat was way below the price charged from them. It is pertinent to mention that a difference of Rs.10

to 20 lacs exists between the price charged from the complainants and what has been charged from the other buyers.

9. That, vide letter dated 10.08.2018 the complainants had approached the respondent and enquired from them about the reason for the delay in the development work at the site as well as delay in handing over the possession. However, respondents failed to give any specific reply and tried to avoid the complainants on one pretext or the other till date. The complainants also through emails and telephonic conversation to the respondents demanded their money back but they denied giving their money. In fact, the respondents are demanding more money under the garb of increased cost which is totally illegal and baseless.
10. That the respondents have failed to comply with the terms agreed in the agreement, by not providing the possession within a period of 42 months from the date of signing of Buyer's agreement i.e. from 13.02.2013 as mentioned in clause 1.6 of agreement which itself got over in year 2016, though full payment of Rs.1,31,23,630/- against the unit has been paid by the complainants as per the time schedule informed to the respondents. The complainants are suffering a lot as when instalments has to be paid they did had no money and promoter/builder/ respondent was continuously sending demand notes with threat of exaggerated interest rates each time. The buyer were forced to sell #03 properties (price of these properties later on shoot up in market after the sale - which has caused loss of 30 to 40 lacs later on to buyer) to meet the timelines and pay instalment and also required to take bank loan against one of the property to pay twice the instalments.

11. That in light of the above stated facts and circumstances, the complainants are 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 complainants.

C. Relief sought by the complainants:

- (i) Direct the respondent handover the possession of the unit along with prescribed rate of interest.
 - (ii) Cost of litigation.
 - (iii) Compensation towards mental pain, agony.
12. 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:

13. It is submitted that the complainants have approached this hon'ble authority for redressal of their 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 Respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. In this regard, reference may be made to the following instances which establish concealment/suppression/misrepresentation on the part of the complainant:

- That the complainants have falsely stated that an additional 'conversion charges' of Rs. 30,000/- has been forcefully taken from them. In this context, it is submitted that the complainants initially opted for subvention plan and vide email dated 22.11.2012, they complainants requested the respondent to change their payment plan from subvention to possession linked and accordingly, the respondents vide email dated 30.11.2012 changed the payment plan of the complainants from subvention to possession linked. The complainants thereafter vide letter dated 10.09.2013 again requested the respondents for change of payment plan from possession linked plan to construction linked plan. Accordingly, upon the request made by the complainants the respondents changed the payment plan from possession linked to construction linked and requested the complainants to pay the payment plan conversion charges of Rs.25,773/-.
- That the complainants have concealed the fact that they have committed defaults in making timely payments of various installments within the stipulated time despite having clearly

agreed that timely payment is the essence of the agreement between the parties and due to default on their part, the respondents were constrained to issue reminder letters to them.

- That the complainants in the entire complaint concealed the fact that no updates regarding the status of the project were provided to them by the respondent. However, complainants were constantly provided construction updates by them vide several emails as already detailed in the reply to list of dates.

From the above, it is very well established, that the complainants 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 Complainants is to unjustly enrich themselves at the expense of the Respondent 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

14. 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 have been huge defaults in making payments of various installments by large number of applicants in the project.

15. It is submitted that with regard to the construction of the tower in which the unit in question is located, work such as structure, brick work, internal and external plaster, IPS flooring have been completed. It is further submitted that the status of the construction in Tower T-25 is at an advanced stage and for the remaining construction, work is going at full pace at the site and the respondents shall be handing over the possession shortly.
16. All other averments made in the complaint were denied in toto.
17. 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.1 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

18. 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.

19. 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.

H. Findings on the relief sought by the complainants.

20. Relief sought by the complainants: The complainants have sought following relief(s):

- i. Direct the respondent to handover the possession alongwith prescribed rate of interest.

Delay Possession Charges

21. The counsel for the respondent states that the unit has been completed and OC has been obtained from the competent authority on 09.12.2021 and offer of the unit has also been made on 15.12.2021. It is observed that there was a delay of more than 4 years in offering the possession as the due date as per BBA was 13.08.2016 and hence, the complainant is allowed delayed possession charges at the prescribed rate of interest and to take the possession of the unit as they have already paid the consideration amount and respondents are directed to pay the delayed possession charges.
22. The complainants intend to continue with the project and are 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."

23. 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 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.

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..

24. 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 complainants not being in default under any provisions 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.

25. 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 residentials, 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.
26. **Admissibility of grace period:** The promoters have proposed to hand over the possession of the unit 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, the flat buyer's agreement was executed on 13.02.2013. So, the due date is calculated from the date of execution of flat buyer's agreement i.e., 13.08.2016. Further it was provided in the floor buyer's agreement that promoters would be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondents are claiming this grace period of 180 days for making offer of possession of the said unit. There is no material evidence on record that the respondent-promoters had completed the said project within

this span of 42 months and had started the process of issuing offer of possession after obtaining the occupation certificate. As a matter of fact, the promoter obtained occupation certificate on 09.12.2021 and offer of the unit has also been made on 15.12.2021 which is much later than the statutory period of 180 days and does not fulfil the criteria for grant of the grace period. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoters and due date of possession comes out to be 13.08.2016.

27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) are 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.

28. 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.

29. 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., 21.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
30. 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;"

31. 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.

Compensation for mental agony and cost of litigation:

32. The complainants in the aforesaid relief are 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

33. 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):

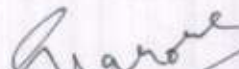
- i. The respondents are directed to pay interest on the paid-up amount at the prescribed rate of 10.70 % p.a. for every month of delay from the due date of possession i.e., 13.08.2016 till the date of offer of possession i.e., 15.12.2021 plus two months i.e., 15.02.2022 to the complainant(s).
- ii. 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 allottees 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 allottees, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoters which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The complainant is also directed to take possession of the allotted unit and pay outstanding dues, if any, after adjustment of interest for the delayed period.

34. The complaint stand disposed off.

35. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2023