



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

Complaint no.	:	1200 of 2019
Date of filing of complaint:		18.03.2019
Date of decision	:	28.03.2023

Anak Lal and Neha Kaul R/o: - 7166, B-10, Vasant Kunj, New Delhi-110070.	Complainants
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
Shri Sanjeev Kumar Arora	Member

APPEARANCE:	
Sh. Sandeep Phogat	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 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	"Pedestial ", Sector- 70A, Gurugram
2.	Nature of project	Residential
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	15 of 2011 dated 07.03.2011
	Validity status	04.04.2025
	Name of licensee	
	Licensed area	
7.	Unit no.	D-61A-FF [As per page no. 27 of complaint]
8.	Unit measuring	1080 sq. ft. [As per page no. 27 of complaint]
9.	Allotment Letter	24.12.2013 (page no. 16 of complaint)
10.	Date of execution of Floor buyer's agreement	07.01.2014 (Page no. 21 of complaint)
11.	Possession clause	5. Possession



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 180 days after the expiry of the said Commitment Period for making offer of possession to purchaser(s).

1.4 "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, 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 36 months from the date execution of Floor Buyer's Agreement.**

12.	Due date of possession	07.01.2017 (calculated from the execution of BBA)
13.	Basic sale Price	Rs. 82,45,000/-
14.	Total amount paid by the complainant	Rs. 39,42,000/- (as alleged by the complainant)

15.	Request for cancellation by the complainants	13.03.2019 (as per page no. 80 of complaint)
15.	Occupation certificate dated	09.03.2020
16.	Offer of possession	Not on record

B. Facts of the complaint

The complainants have made the following submissions in the complaint: -

- That the complainants booked unit in their "Pedestal @ 70A" project in Sector-70-70A Gurugram relying upon the assurances of their representatives believing them to be true, the complainants signed application for registration/ allotment of a unit in the said project known as 'Pedestal @ 70A' and paid a sum of Rs.5.00.000/- Rs. 400.000/- and Rs. 5.23.103.95/-i.e. total Rs 14.23.103.95/- vide cheques no. 011850, 011851 dated 31.07.2013 and 011849 dated 19.09/2013 respectively and the respondents duly acknowledge the same vide receipts no. 2013/1400012016, 2013/1400012017 dated 02.08.2013 and 2013/1400015913 dated 23.09.2013. It is pertinent to mention herein that the payments were received by the Respondents before sanctioning of demarcation and zoning plan.
- That the respondent on 24.12.2013 provisionally allotted 2 bedroom flat with servant quarter bearing unit No. D-61A-FF on first floor having super area measuring 1080 Sq. Ft in the said project at a basic sale price of Rs 82.45.000/- to the complainants under subvention plan.

5. That the respondents sent already prepared floor buyer's agreement in respect of the said unit to the complainants for signing purposes and further asked them to sign on the dotted lines. The terms of the agreement were completely one sided. By the time the agreement was handed over by the respondents to the complainants to sign the agreement, the complainants were already coerced to pay huge sum of Rs. 14.23.103.95/-. the complainants had no alternative but to sign on the dotted lines of the agreement despite not agreeing to various terms and conditions of the agreement. on plain reading of the floor buyer's agreement, it shows that all clauses of the floor buyer's agreement were one dimensional and favouring the respondents. the agreement was prepared by the respondent in arbitrary manner. The complainants tried to suggest few changes in the agreement, but the suggestions were declined arbitrarily by the builder and the complainants were asked to sign on the dotted line against their wishes. The complainants had no power of deliberation, negotiation or persuasive power to negotiate or change anything in the said agreement and were asked to sign on the dotted line. The complainants were feeling betrayed as they had already invested huge amount in the project and still have no claim/right in discussing the terms of the agreement the floor buyers agreement prepared by the respondents is template one sided and eccentric favouring only the interest of developer. The interest of the complainants is not even considered while preparing the said agreement. It is submitted floor buyer agreement dated 07.01.2014 is not binding between the parties.

It was mentioned in the agreement that the project would be completed within 36 months from date of agreement.

6. That on the same date i.e. 07.01.2014, a tripartite agreement was executed between the complainants, respondents no. 1 & 2 and Housing Development Finance Corporation Ltd. for taking a loan of Rs.71.60,830/- on the said unit. The home loan agreement was also executed between the complainants and HDFC Ltd. on 13.01.2014 promising to pay a sum of Rs.73.55,000/- with interest thereon @6.5% per annum.
7. Since August 2013 till date, the respondents received a total sum of Rs. 39.42,100.95/- from the complainants as well as from HDFC Ltd. through instalments. This amount is inclusive of Rs. 2,20,514/- paid by complainants as Pre-EMI which BPTP were supposed to make Pre-EMI payment till possession. The respondent agreed to pay the Pre-EMI Interest to be deposited in the account of complainants regularly in their bank account till offer of possession. But the respondents have neither completed the project within commitment period nor paid any compensation on account of delay in handing over the possession of the said unit to the complainants. Further as agreed under the agreement, the respondent further defaulted in making the regular Pre-EMI payment to the complainants as well. Various emails and letters were exchanged between the parties in respect of the same but the respondent remained in continued default of their part of obligations including completion of project on time and further failed to pay delayed compensation till date.

8. That inspite of repeated emails and letters sent by the complainants since March-April 2017 till date, the respondents have not compensated the complainants nor paid the said amount. The respondent vide their demand dated 06.10.2018 asked the complainants to pay a sum of Rs 39:40.534/- on account of casting of first floor roof slab and on casting of second floor roof slab. The banker of complainants namely HDFC made a technical inspection of the site which revealed that stage of construction had not reached for which the demand was raised by respondent. The respondent tried to cheat the complainants and its banker. However, the respondent further issued an illegal demand of Rs. 41.89.362/- for the same again. The respondents requested them to give consent to its banker for release of payment for the said demand. The complainants objected for the illegal actions and demand of respondents and raised its protest by way of email dated 16.10.2018. The respondents has been admitting in its emails about delay in completion and solely on account of them. Thereafter after being fed up with the illegal acts and constant and continuous delay on the part of respondent, the complainants initially orally requested the respondent to refund the entire amount deposited by complainants with interest @ 14.5% per annum with monthly rest and further asked the builder to provide delay compensation to the complainants. The complainants also put up an email dated 13.03.2019 asking the Respondent to act on their demand of refund with interest and compensation but to no avail.
9. That despite repeated requests on the part of complainants for refund of payments due to delay in the project, with interest by sending various emails

and letters starting till date, but the respondents have not refunded the same despite repeated requests on the part of complainants for refund of amount, the respondents are hell bent to misappropriate the amount received by respondents and instead of processing the refund requests, issued a final reminder notice dated 13.3.2019 asking them to pay the outstanding amount. The respondents further threatened the complainants to cancel their allotments and to forfeit the amount deposited by complainants in entirety which is illegal and full of malafide. All the actions of the respondents are illegal and malafide. They are bound to refund the amount paid by complainants back with interest as entire delay is on the part of respondents.

C. Relief sought by the complainants:

The complainants have sought following relief(s).

- i. Direct the respondents to refund the entire amount paid by the complainants along with prescribed rate of interest.
- ii. Direct the respondents to give Rs. 5,00,000/- as compensation on account of loss/injury as well as mental agony suffered by the complainants and cost of litigation.

D. Reply by the respondents:

10. 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 complainants:

- The complainants have alleged to having place reliance on the alleged various representations made by the respondent for booking a unit in question, whereas the complainants have approached the respondent on their own volition, after conducting due diligence of the relevant real estate geographical market and after ascertaining the financial viability of the same. In this regard, it is submitted that the complainants are investors and have booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainants have filed the present purported complaint to wriggle out of the agreement which they are lawfully not entitled under the said agreement.
- the complainants have further wrongly stated in the complaint under reply that the respondents had obliged to pay 100% of the



pre-EMI interest to the HDFC. It is further submitted that there is not even a single document/correspondence exchanged between the parties which mentions that the pre-EMI interest shall be directly paid to the bank by the respondents.

- The complainants, in the entire complaint including the prayer, have alleged and portrayed that the complainants have paid an amount of Rs. 39,42,100/- towards the unit in question, whereas as a matter of fact, out of said amount, the complainants have only paid an amount of Rs. 14,20,463, whereas HDFC's contribution is Rs. 18,89,768/- and the respondent have paid/adjusted towards pre-EMI an amount of Rs. Rs. 5,22,704/-

From the above, it is very well established, that the complainants have 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.

11. It is further submitted that, while entering into the agreement, the complainants had the knowledge that there may arise a situation whereby the possession could not be granted to the complainants as per the commitment period and in order to protect and/or safeguard the

interest of the complainants, the respondent have provided reasonable remedy under clause-6, and, the complainants having accepted to the same in totality, cannot claim anything beyond what has been reduced to in writing between the parties.

12. As is apparent from the submissions made hereinabove, there is no delay in offering possession to various allottees of the floors, including the complainants herein as the complainants have also agreed by way of the agreement that subject to force majeure and compliance of all terms and conditions, the respondents shall endeavour to offer possession within 36 months from the date of execution of agreement with an additional grace period of 180 days. It is further submitted that, in case of delay, respondents vide clause-6 of the agreement also agreed to pay compensation in case, of delay in offering possession. it is further submitted that the respondent has already received the occupancy certificate for the unit on 09.03.2020.
13. All the averments made in the complaint are 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 submissions made by the parties.
- D. Jurisdiction of the authority**
15. The authority has completed territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.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.

D.II Subject-matter jurisdiction

17. 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.

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 promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



19. 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."

20. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter noted above 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 complainants.

E. I Direct the respondents to return sale consideration received by them from the complainants till date along with prescribed interest.

21. The complainants' states that as per buyers agreement executed with the respondents on 07.01.2014, the respondent-promoters was required to hand over the possession by 07.01.2017 and has paid an amount of Rs. 39,42,000/- against a basic sale price of Rs. 82,45,000/-. But even after a lapse of more than 2 years from the due date of possession, the respondents failed to complete the project and to hand over the possession and hence, the complainants are not interested in continuing in the project and has been seeking the refund from the respondents vide request dated 13.03.2019 made after a lapse of more than 2 years from the due date of possession and hence, is entitled for full refund alongwith prescribed rate of interest from the date of its deposit till realization of the amount.
22. The respondents' states that there was failure on the part of complainant-allottees to make timely payment of instalment which was part of buyer's agreement and a final demand notice was sent on 13.03.2019 (Annexure R10) itself which clearly stipulated that on failure of payment, the unit shall be automatically terminated. But after issuance of above demand notice, no other termination letter or refund of amount has been made to the complainants and OC of the project has been obtained on 09.03.2020 after filing of above complaint seeking refund of the amount deposited.

23. In the present complaint, the occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainants are situated is received after filing of application by the complainants for return of the amount received by the promoters on failure of promoters to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. So, the complainants intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject apartment along with interest at the prescribed rate as provided under section 18(1) of the Act. Section 18(1) of the Act is reproduced below for ready reference.

"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.-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra) reiterated in case of M/s Sana Realtors Private

Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020

decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

25. The authority is of the view that there is a sizeable delay in completing and making offer of possession from the date promised for handing over in BBA which expired on 07.01.2017 and the complainant/ allottees after waiting for 2 years 2 months and 6 days wished to withdraw from the project as they are seeking cancellation/surrender on 13.03.2019. Neither the project was complete, nor OC has been obtained at the time when above said request/surrender was made and hence in view of the above, the allottee has become entitled to refund with interest.
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., 28.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70 %**.
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 are established. As such, the complainants are entitled to



refund the entire amount paid by them i.e., Rs. 39,42,000/- at the prescribed rate of interest i.e., @ 10.70% p.a. from the date of payment of each sum till its actual realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

Compensation towards mental torture, harassment and litigation cost.

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 complainants are advised to 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 respondent/promoters are directed to refund the entire amount of Rs. 39,42,000/- paid by the complainants along with prescribed rate of interest @ 10.70% p.a. from the date of each payment till the actual date of refund.
- 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.
- iii. The respondents are directed to deduct/adjust the amount paid against pre-EMI from the amount refundable and the outstanding dues of the financial institution will be cleared first and remaining amount shall be paid to the complainant-allottee.

30. Complaint stands disposed of.

31. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023