



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	546 of 2022
Date of filing:	18.04.2022
Date of first hearing:	29.06.2022
Date of decision:	13.04.2023

Shanta Saxena,  
R/o 302 Tower H, Princess Park, Tigaon Road  
Sector-86, Faridabad, Haryana- 121002

....COMPLAINANT(S)

VERSUS

BPTP Parkland Pride Limited  
M-11, Middle Circle, Connaught  
Circus, New Delhi- 110001

....RESPONDENTS(S)

**CORAM:** Dr. Geeta Rathee Singh Member  
Nadim Akhtar Member

**Hearing:** 5<sup>th</sup>

**Present: -** Mr. Pranjal P. Chaudhary, Counsel for the complainant.

Mr. Hemant Saini, Counsel for the respondent.

## ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 18.04.2022 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real

*Geeta Rathee*

Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

#### A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project	Park Elite Floors, Phase-II Parklands Faridabad.
2.	RERA registered/not registered	Not registered

*S. Rastogi*

3.	Unit no.	Initially allotted unit- H2-09-GF Re-allotted unit- PE-194-GF
4.	Unit area	1510 square ft (Super Area)
5.	Date of allotment	18.09.2012
6.	Date of builder buyer agreement	25.02.2013
7.	Due date of offer of possession	25.08.2015
8.	Possession clause in BBA (Clause 5.1)	Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being if default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be

*Rathee*

		entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers) wherein the Purchaser(s) will be granted 30 days period to complete the formalities and payment of amount demanded.
9.	Basic sale price	₹ 27,79,101.72/-
10.	Amount paid by complainant	₹ 31,93,010.73/-
11.	Offer of possession	No offer

### B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant in the year 2009 applied for booking the floor in the real estate project named "Park Elite Floors", Faridabad by paying Rs. 3,00,000/- following which complainant was initially allotted unit no. H2-09-GF having area of 1510 sq. ft. on 24.12.2009. Complainant was re- allotted unit no. PE-194-GF vide letter dated 12.06.2012.
4. Complainant entered into builder buyer agreement with the respondent on 25.02.2013. As per said agreement the respondent was supposed to hand over possession of the said unit on 25.08.2015 (including grace

*Rathie*

period of 180 days). The complainant was supposed to pay the basic sales price of Rs. 27,79,101.72/-. Against said consideration, complainant has paid an amount of Rs. 31,93,010.73/-.

5. New tax regime of CGST and SGST came into force w.e.f from July 2017, and due to the delay caused by the respondent in handing over the possession, the complainant will be additionally burdened with the CGST and SGST. Respondent is liable to refund any tax burden which will be imposed on the complainant under GST laws as the same would not have been done if the possession was timely delivered to the complainant.
6. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

### **C. RELIEF SOUGHT**

7. The complainant in his complaint has sought following reliefs:
  - i) In the event that the registration has been granted to the Opposite party for the abovementioned project under RERA Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA Act, 2016 for violating the provisions of the RERA Act, 2016.

*G. Pathee*

- ii) In exercise of powers under section 35 of RERA Act, 2016, direct the Opposite party to place on record all statutory approvals and sanctions of the project;
- iii) In exercise of powers under Section 35 of RERA Act, 2016 and Rule 21 of HRE (R&D), Rules, 2017, to provide complete details of EDC/IDC and statutory dues paid to the Competent Authority and pending demand if any;
- (iv) To compensate the Complainant for the delay in completion of the project by paying delay interest from 25.08.2015 till actual delivery of possession by paying interest on the total amount of Rs. 31,93,010.73/- at the rate in accordance with rule 15 of the RERA Act, 2016.
- (v) To pay/refund any liability of GST which will be payable by the complainant as the same would not have been imposed upon the complainant if the possession was delivered on time.
- (vi) To compensate the complainant for a sum of Rs.1,00,000/- as damages on account of mental agony, torture and harassment;
- (vii) In case the opposite party is not ready to handover the possession at the earliest then it prayed before this Hon'ble Authority to grant any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 06.10.2020 pleading therein:

8. Since the unit in question is being constructed over plot area tentatively measuring 109.254 sq. mtrs. As per section 3(2)(a) of RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 sq. meters
9. That builder buyer agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
10. Respondent has admitted allotment and execution of floor buyer agreement in favor of complainant stating that name of co-owner Ms. Meenakshi Saxena was deleted from booking/allotment of unit upon request of complainants. Payment of Rs. ₹ 31,93,010.73/- has also been admitted by the respondent. It is stated that in terms of FBA dated 25.02.2013 respondent proposed to handover the possession of the unit within a period of 24 months from the execution of FBA or sanctioning of building plan by the purchaser, whichever is later along with a grace period of 180 days.

11. Construction of the project was going on in full swing but it got effected due to the circumstances beyond control of the respondent such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority and Covid-19 etc.
12. It has been stated that as per clause 7 of the FBA it was duly agreed between the parties that the complainant shall be liable to pay all the statutory dues as applicable.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

13. During oral arguments learned counsel for the complainant insisted upon possession of his booked unit along with delay interest. He submitted that he is not pressing upon the relief with respect to EDC/IDC etc. He further argued that GST must not be levied on the complainant as deemed date of possession was 25.08.2015 that is before the advent of GST. Learned counsel for the respondent reiterated arguments as were submitted in written statement. He submitted that complainant's booked unit has not received occupation certificate till date. He offered to refund the paid amount along with 9% interest which was outrightly denied by ld. counsel for the complainant.

*S. Rathee*



**F. Findings on the objections raised by the respondent.**

**F.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.**

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd decided on 16.07.2018. Relevant part of the order is being reproduced below:

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*“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”*

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this

A handwritten signature in blue ink, appearing to read 'S. Sathee', is written over a horizontal line.

Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

**F.II Objections raised by the respondent regarding force majeure conditions.**

The obligation to deliver possession within a period of 24+6 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent is totally null and void as the due date of possession was in the year 2015 and the NGT order referred by the respondent pertains to year 2016 therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals. The following reasons are given by the respondent- NGT order, COVID-19 and delay in payments by many customers.

The due date of possession in the present case as per clause 5.1 is 25.08.2015 therefore, question arises for determination as to whether any situation or circumstances which could have happened prior to this date due to which the respondent could not carry out the construction activities in the project can be taken into consideration. Looking at this aspect as to whether the said situation or circumstances was in fact beyond the control of the respondent or not. Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. Moreover, the respondent has not given any specific details with regard to delay in payment of installments by many allottees. So far as NGT order and COVID-19 are concerned these events are stated to have taken place in the year 2016 onwards i.e. the post due delivery of possession of unit to the complainant. So, the plea of respondent to consider force majeure conditions towards delay caused in delivery of possession is without any basis and the same is rejected.

**G. Findings on the relief sought by the complainant**

**G.I Direct the respondent to pay delayed possession charges at the prescribed interest per annum from the deemed date of possession till actual delivery of possession of unit in question.**

14. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under

the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-

*“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”.*

15. Clause 5.1 of BBA provides for handing over of possession and is reproduced below:-

*Subject to Clause 14 herein or any other circumstances not anticipated and beyond the control of the seller/confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers) wherein the Purchaser(s) will be granted 30 days period to complete the formalities and payment of amount demanded.*

16. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanctioning of building plan by the concerned department. The drafting of this clause is vague and uncertain and heavily loaded in favor of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of unit and to deprive the allottee of his right accruing after delay in delivery possession.

17. Payment of delayed possession charges at the prescribed rate of interest.

Proviso to Section 18 provides 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 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 (NCLR) 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".*

18. 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.

19. Taking the case from another angle, the complainant-allottee was entitled to the delayed, possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the Authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable, the promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This Authority is duty bound to take into consideration the legislative intent i.e. to protect the interest of the consumers /allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex- face one-sided, unfair, and unreasonable,

G. Patree

and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding. In these circumstances the complainant is entitled to interest at prescribed rate from the deemed date of possession till delivery of valid offer of possession.

20. 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. 13.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

21. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(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;





22. The Authority observes that the respondent has severely misused its dominant position. They executed the BBA in the year 2013. Due date of possession was 25.08.2015. Now, even after lapse of 8 years respondent is not able to offer possession to the complainant. Respondent has not even specified as to when respondent will be in a position to handover possession of booked apartment. Complainant however is interested in getting the possession of her apartment. She does not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation certificate of the project in question. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date i.e., 25.08.2015 to the date on which a valid offer is sent to her after obtaining occupation certificate.

23. Authority has got calculated the interest on total paid amount from the deemed date of possession till the date of this order at the rate of 10.70% till and said amount works out to ₹ 24,73,230/- as per detail given in the table below:



Sr. No.	Principal Amount	Deemed date of possession or date of payment whichever is later	Interest Accrued till 13.04.2023
1.	₹ 22,07,906.83/-	25.08.2015	18,05,179/-
2.	₹ 3,00,000/-	03.11.2015	2,39,123/-
3.	₹ 4,00,000/-	19.04.2016	2,99,131/-
4.	₹ 2,85,103.9/- (amount taken from statement of accounts dated 12.01.2019)	12.01.2019	1,29,797/-
	Total = ₹ 31,93,010.73/-		₹ 24,73,230/-
	Monthly interest		₹ 28,081/-

24. Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 24,73,230/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 31,93,010.73/- monthly interest of Rs. 28,081/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

25. The complainant is seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency in services and cost escalation. It is observed that Hon'ble Supreme Court of

*Rathee*

India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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 & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

26. Ld. counsel has neither argued nor pressed upon relief no. i, ii, v and vi during hearing/proceeding.

#### **I. DIRECTIONS OF THE AUTHORITY**

27. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to pay upfront delay interest of Rs. 24,73,230/- to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, on the entire amount of Rs.




31,93,010.73/- monthly interest of Rs. 28,081/- shall be payable by the respondent to the complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

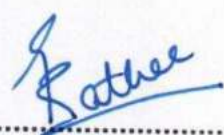
(ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to her.

(iii) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e, 10.70% by the respondent/ Promoter which is the same rate of interest which the promoter shall be liable to pay to the allottees.

(iv) The respondent shall not charge anything from the complainant which is not part of the agreement to sell.

28. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.

  
.....  
NADIM AKHTAR  
[MEMBER]

  
.....  
DR. GEETA RATHEE SINGH  
[MEMBER]