

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

**Complaint no.** : 831 of 2022  
**Date of filing complaint** : 08.03.2022  
**Date of decision** : 19.05.2023

Vimla Sharma and Naresh Kumar <b>R/O:</b> - House No. 386, GF, Near Meer Singh Complex, Village Kapshera, Delhi-110037.	<b>Complainants</b>
Versus	
1. M/s BPTP Limited 2. M/s Countrywide Promoters Private Limited <b>Regd. Office at:</b> - M-11, Middle Circle, Connaught Circus, New Delhi-110001	<b>Respondents</b>

<b>CORAM:</b>	
Shri Sanjeev Kuma Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Priyanka Aggarwal	Advocate for the complainant
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 allottee 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- 37-D, Gurugram
2.	Nature of project	Group Housing Towers
3.	<b>RERA registered/not registered</b>	Registered 299 of 2017 dated 13.10.2017
4.	<b>DTPC License no.</b>	83 of 2008 dated 05.04.2008 and 94 of 2011 dated 24.10.2011
	Validity status	04.04.2025 and 23.10.2019
	Name of licensee	SUPER BELTS COUNTRYWIDE PVT. LTD and 3 PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres and 19.74
7.	Unit no.	T-20-504, Tower 20 [As per page no. 89 of reply]
8.	Unit measuring	1691 sq. ft. [As per page no. 89 of reply]





9.	Date of execution of Flat buyer's agreement	25.04.2013 (As per page no. 83 of reply)
10	Date of building plan	21.09.2012
11.	Possession clause	<p><b>5. Possession</b></p> <p><b>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within e Commitment Period.</b> 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><b>1.6 "Commitment Period"</b> 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 <b>Purchaser(s) within a period of 42 months from the date of sanction of the building plan or</b></p>

		<b>execution of Flat Buyer's Agreement, whichever is later.</b>
12.	Due date of possession	25.10.2016 (Calculated from the date of execution of buyers agreement)
13.	Basic Sale Price	<b>Rs. 88,77,750/-</b> [as per page no. 90 of reply ]
14.	Total amount paid by the complainant	Rs. 85,66,514/- (as alleged by the complainant)
15	Termination letter	10.12.2019 & 03.12.2021 (as per page no. 179-181)
16.	Occupation certificate dated	09.12.2021
17.	Offer of possession	20.12.2021 (As per page no. 183 of reply)
18	Again, termination letter	05.02.2022 (As per page no. 202 of reply)
19	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., 25.10.2016. 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 25.10.2016.

### **B. Facts of the complaint**

3. That the allottees approached to the respondent for booking of a flat admeasuring 1691 Sqft in BPTP Terra Sector- 37 D, Gurugram and paid booking amount Rs. 600000/- through cheque 340258 on dated 09.08.2012.
4. That the complainant was allotted the flat no. T20-504 , 5<sup>th</sup> Floor , Tower-T-20,admeasuring 1691 Sq ft in Project "BPTP Terra" Sector- 37 D, Gurugram , Haryana on dated 07.12.2012.
5. That the respondent to dupe the complainants in their nefarious net even executed Buyer's Agreement Signed Between Complainant and M/S BPTP Limited & M/s Countrywide Promoters Pvt. Ltd on dated 25.04.2013, Just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant.
6. That the total cost of the said flat is Rs. 10628092/- including Basic Sale Price, Development charges, Open Car Parking, Covered Car Parking,

Club Membership Charges, Firefighting, Electrification & power Backup installation charge, as per Builder Buyer Agreement Clause 3 and out of that sum of Rs 8566514/- Paid by the complainants (more than 80% of Total Sale Consideration) in time bound manner.

7. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs 8566514/- to the respondent till date and only one instalment is remained as per the Payment Schedule (more than 80% of Total Sale Consideration paid by complainant) and paid amount was demanded by the respondent without doing appropriate work on the said project even after extracting more than 80% amount which is illegal and arbitrary.
8. That respondent was liable to hand over the possession of a said unit before 24.04.2017 so far from completion as per Buyer's agreement clause no 3.1 but builder offered the possession on dated 05.08.2020 but flat are not in habitable condition.
9. That Complainant has paid all the instalments timely and deposited Rs. 3157759.50/- .That respondents in an endeavor to extract money from Allottees devised a payment plan under which respondent linked more than 15 % amount of total paid against as a an advance 80 % amount linked with the construction of super structure only ) of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development rest 5 % lined with offer of possession.
10. That respondent executed FBA is one sided at the time of offer of possession builder used new trick for extracting extra money from



Complainant and forcibly imposed escalation cost of Rs 791407/- And wrongly justified it. It is understood when respondent booked the flat in 2012 and which was to be delivered by 2017 (as per agreement it was to be delivered after 48 months (including Grace period) from date of FBA) and therefore it is understood inflation was calculated at the time of booking. if project is delayed by the respondent, Complainant is not responsible. When we see inflation index of past 18 year during this period rate of inflation is decreased so builder is liable to give discount in Basic Sale price rather than forcibly imposing escalation cost with unjustified reason. Basic sale price which was fixed at the time of booking so demand of escalation cost is totally illegal, arbitrary, unjustified and unacceptable.

11. That the respondent at the time of offer of possession forcibly imposed Escalation cost Rs. 791407/- and increased the super area of flat 1691 Sq. Ft to 1811 Sq Ft. But Carpet area remains same. Due to increase in super area payable amount was increased and it was created extra burden on complainant which has been objected by the complainant at the time of offer of possession. It is unjustified and illegal.
12. That the respondent had illegal and unjustified demand towards VAT of Rs 24381/- intimidation attempt to coerce and obtain an illegal and unfounded claim amount. Respondent have cited case laws, namely the Raheja Development Corporation Case (2005) and the L&T Limited case (2013), which are broad and general rulings on taxation and works contract, but fail to apply to your frivolous, false, misleading claim. That these cases have laid down a general principle of law in respect of works contract taxes and has absolutely no bearing in the present matter. We

maintain that the scheme have come in operation through notification of the State of Haryana, and is independent of the cited case laws, and is merely to rationalize the taxation on developers as the appropriate assesses. Respondent applied reasoning in the Note on value added liability is misleading and misconstrued. That the liability of the VAT is on builder, and it is a given under the law.

13. That keeping in view the snail paced work at the construction site and half-hearted promises of the Respondent, and trick of extract more and more money from Complainant pocket seems and that the same is evident from the irresponsible and desultory attitude and conduct of the Respondent, consequently injuring the interest of the buyers including the Complainant who has spent her entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the Respondent conducted its business and their lack of commitment in completing the Project on time, has caused the Complainant great financial and emotional loss.

**C. Relief sought by the complainant.**

14. The complainant has sought following relief:
- (i) Direct the respondents to handover the physical possession of the unit along with prescribed rate of interest.
  - (ii) Direct the respondents to quash the escalation cost of RS. **791407/-**.
  - (iii) Direct the respondent to quash one year advance maintenance charges .



- (iv) Direct the respondent **quash the increased super area from 1691 Sq Ft. to 1811 Sq Ft. of flat as carpet area remain same as previous.**
- (v) Direct the respondent to quash the VAT charges.
- (vi) Direct the **direct the respondent to pay interest on maintenance security**
- (vii) Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

**D. Reply by the respondents.**

15. It is submitted that the complainant has approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, 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 cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- That the complainant falsely stated that the timely payments were made by the complainant as and when demanded by respondent, however, as detailed in the reply to list of dates, it is submitted that the complainant made several defaults in making timely payments

as a result thereof, respondent had to issue reminder letters for payment of the outstanding amounts.

- That the complainant in the entire complaint concealed the fact that updates regarding the status of the project were provided to him by the respondent.

16. It is further submitted that having agreed to the above, at the stage of entering into the FBA, and raising vague allegations and seeking baseless reliefs beyond the ambit of the FBA, the complainants are blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate'. In this regard, the respondent reserves their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.
17. That the Project in question was launched by the Respondent 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.
18. All other averments made in the complaint were denied in toto.
19. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.



## **E. Jurisdiction of the authority**

The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

### **E. I Territorial jurisdiction**

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

### **E. II Subject-matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

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 complainant at a later stage.

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

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

- (i) Direct the respondents to handover the physical possession of the unit along with prescribed rate of interest.
- (ii) Direct the respondents to quash the escalation cost of RS. 791407/-.
- (iii) Direct the respondent to quash one year advance maintenance charges.
- (iv) Direct the respondent quash the increased super area from 1691 Sq Ft. to 1811 Sq Ft. of flat as carpet area remain same as previous.
- (v) Direct the respondent to quash the VAT charges.
- (vi) Direct the direct the respondent to pay interest on maintenance security
- (vii) Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

20. The complainant was allotted unit no T-20-504, Tower 20 in the project "Terra" by the respondent builder for a basic consideration of Rs. 88,77,750/- and he paid a sum of Rs. 85,66,514/- which is approx. 97 % of the basic sale consideration. The respondent had sent reminder letter



dated 25.04.2014 and final reminder letter dated 27.12.2012, 28.01.2013, 28.02.2013, 22.12.2014, 27.01.2015, 26.02.2015, 29.11.2015, 21.12.2015, 21.01.2016, 20.02.2016, 22.08.2016, 05.01.2017 and final opportunity dated 17.02.2017 and 22.08.2018 to make payment of the outstanding amount. The complainant continued with their default and again failed to make payment even after receipt of final reminder letter.

21. The respondent sent termination letter dated 10.12.2019 and 03.12.2021 to the complainant for non-payment after receipt of final reminders. But as a goodwill gesture the respondent offered the possession of the unit to him vide offer of possession dated 20.12.2021. The respondent-builder again sent termination letter dated 05.02.2022 for non-payment by the complainant
22. It is observed that the respondents have raised various demand letters to the complainants and as per section 19 (6) & (7) of Act of 2016, the allottees were under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. When sufficient time and opportunities have been given to the complainants to make a payment towards consideration of allotted unit, it would be violation of section 19 (6) & (7) of Act of 2016. As per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent builder has to return the remaining amount after deducting 10% of total sale consideration as earnest money, along with interest @9.70% (MCLR+2%) from the date of cancellation till its realization. The authority observes that the complainants are not entitled physical possession of the unit or delay possession charges as their own

default, the unit has been cancelled by the respondents after issuing proper reminders. Therefore, the cancellation of the allotted unit by the respondent is valid. However, the respondent has contravened the provision of sec 11(5) of the Act and illegally held the monies of the complainants. Therefore, the respondent is directed to return the paid up amount after deducting 10% being earnest money of the total sale consideration as per allotment letter, along with interest @10.70% (MCLR+2%) from the date of cancellation till its realization.

23. **Admissibility of refund at prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the rate of 18% p.a. However, allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

24. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is



reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

25. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.05.2023 is 8.7%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
26. 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 is established. As such, the complainants are entitled to refund the entire amount paid by him 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

#### **H. Directions of the authority**

27. 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):

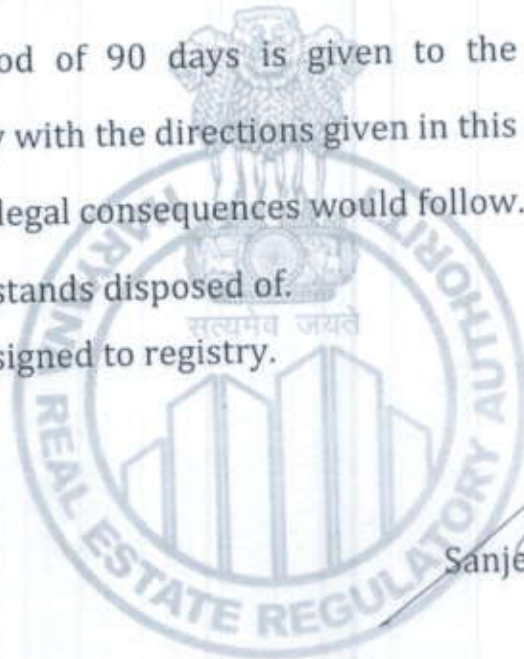
1. The respondent-promoters are directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money with statutory taxes (subject to its actual payment and furnishing of proof of actual payment) along with an interest @ 10.70% p.a. on the refundable amount from the date of cancellation i.e., 05.02.2022 till the actual

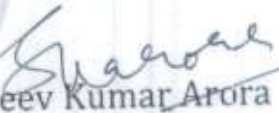
date of refund of that amount. (Since it's a matter of cancellation, in proceeding of the day dated 19.05.2023 the interest on refund is allowed inadvertently mentioned from the date of each deposit till its realization instead of from the date of cancellation till the actual date of refund)

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.

28. Complaint stands disposed of.

29. File be consigned to registry.



  
Sanjeev Kumar Arora  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**  
**Dated: 19.05.2023**

**HARERA**  
**GURUGRAM**