

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

Complaint no.	:	1980 of 2018
First date of hearing:		03.04.2019
Date of decision	:	31.01.2023

M/s Sri Jinmata Developers LLP. R/o: - 1st floor, 178, Jamunalal Bajaj Street, Khatari Katra, Kolkata, West Bengal-700007.	<b>Complainant</b>
Versus	
M/s BPTP Limited. <b>Regd. Office at:</b> 28, ECE House, 1 <sup>st</sup> floor, Kasturba Gandhi Marg, New Delhi-110001.	<b>Respondent</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Dhruv Lamba	Advocate for the complainant
Sh. Venkat Rao	Advocate for the respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed



that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"Terra", Sector- 37-D, Gurugram
2.	Nature of project	Group Housing Towers
3.	<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   94 of 2011 dated 24.10.2011
	Validity status	04.04.2025   23.10.2019
	Name of licensee	SUPER BELTS COUNTRYWIDE PVT. LTD and 3 others   PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres   19.74
7.	Unit no.	T-24-304, Tower 24 [As per page no. 21 of complaint]
8.	Unit measuring	1691 sq. ft. [As per page no. 21 of complaint]



9.	Date of execution of Flat buyer's agreement	Not executed
10	Building plan	21.09.2012
11.	Possession clause (Taken from the similar case of same project)	<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 execution of Flat Buyer's Agreement, whichever is later.</b></p>



12.	Due date of possession	21.03.2016 (Calculated from the date of building plan as BBA is not executed)
13.	Basic sale price	Rs. 87,88,972/- [As per page no. 21 of complaint]
14.	Total amount paid by the complainant	Rs.46,49,299/- (As alleged by the complainant)
15	Termination Letter	27.08.2014 (As per page no. 93 of reply)
15.	Occupation certificate dated	09.12.2021
16.	Offer of possession	not offered
17	Legal notice sent by the complainant	04.07.2017 (Page no. 36 of complaint)

**B. Facts of the complaint**

The complainant has made the following submissions in the complaint: -

3. That in 2012, the complainant booked a park facing unit having area of 1650 sq. ft. on 5th - 8 floor in BPTP Terra, Sector - 37D, Gurugram and paid Rs. 6,00,000/- as booking amount. The flat was booked under construction linked payment plan for basic sale consideration of Rs. 88,77,750/-. The letter of confirmation of said amount stated that the original receipt for such booking would be provided after the realization the cheque. Vide letter dated 29.10.2012 bearing reference



number BE88/1691/213/143230/177, it was apprised of the confirmation of unit selected for allotment, as unit no 304 to the complainant unilaterally and without any intimation or approval from it.

4. That the respondent represented to the complainant that the said project is having shopping centre, market, and various other amenities required for a residential colony. It was also represented that the said project upon handing over of the possession shall have quality construction, well laid road, STP, water supply, electricity connection and only upon completion of the project and grant of occupancy certificate, the possession would be offered and expected date of possession was stated to be March 2015.
5. It is pertinent to mention here that the respondent increased the area of the unit with mala-fide intention and demanded excess amount to that of the lowered per sq. ft. for the changed plan. The demands made by the respondent were illegal and with an intention to deprive the complainant of its respective valuable property. In this way, the complainant was forced to pay the additional amount demanded by the respondent towards the increase in the area of the unit. Further, the complainant stated that the payment statement depicted that the PLC charges levied against the unit were again illegally obtained, as at the time of booking, it was conveyed to complainant that the said PLC charges will only be applicable upto 2 floors and not beyond.



6. Further, the complainant pleaded that respondent has not yet executed the final agreement of the unit even after procuring more than 70% of the total consideration. While it has been requesting the same for a very long time yet no action has been taken from your end. These tactics are nothing but to harass and pressurize the complainant to comply with respondents unjust and illegal demands
7. That the work on other amenities like external, internal mep (Services) is yet not complete. Now it is more than 5 years from the date of booking and even the constructions of towers is not complete. It clearly shows the negligence of the builder. As per project site conditions, it seems that project would take furthermore than a year to complete in all respect, subject to willingness of respondent to complete the project.

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

The complainant has sought following relief(s).

- i. To get refund of the entire amount paid by the complainant along with interest.
- ii. To get compensation of Rs. 5,00,000/- on account of mental agony and harassment caused by the Respondent.
- iii. To get litigation cost of Rs. 1,00,000/-.

**D. Reply by the respondent:**

8. It is submitted that the complainant has approached this hon'ble authority for redressal of his 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. Thus in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- i) That the complainant falsely stated that the payments were stopped due to dormant stage of the project. 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, the respondent had to issue several reminder letters for payment of the outstanding amount and was compelled to issue a final and last opportunity demand notice dated 18.06.2014, the complainant did not pay any heed to the same. Therefore, respondent was left with no other option but to issue termination letter dated 27.08.2014 whereby the unit in question stood terminated due to constant defaults in timely payments by the complainant and due to non-compliance of the terms of the application for allotment agreed upon by both the parties.
- ii) That the complainant concealed the fact that respondent adjusted Rs.88,777.5/- as discount in complainant's account.



iii) That the complainant falsely stated that the timely payments were made by them 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.

From the above, it is very well established, that the complainant has been distorting/concealing/misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainant is to unjustly enrich at the expense of the respondents 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.

9. 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 default in making payments of various instalments by large number of applicants.
10. All other averments made in the complaint were denied in toto.





11. An application for change of title of the complaint dated 11.11.2022 has been received by the complainant wherein it was submitted that w.e.f 18.08.2020 M/s Sri Jinmata Developers Pvt. Ltd. (the present complainant) has been converted to M/s Sri Jinmata Developers LLP in pursuance to the provisions of the Company Act, 2013. Furthermore, it is submitted that M/s Sri Jinmata Developers Pvt. Ltd. and M/s Sri Jinmata Developers LLP is one and the same entity and all the rights and obligations which were earlier vested in M/s Sri Jinmata Developers Pvt. Ltd. are now vested in M/s Sri Jinmata Developers LLP. The said application was hereby allowed by the Authority.
12. 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 submission made by the parties.

**D. Jurisdiction of the authority**

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.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.

## D.II Subject-matter jurisdiction

13. 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.*

14. 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.
15. 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 and M/s Sana Realtech Pvt. Ltd V/s Union Of India & Others SLP© 13005/2020 decided on 12.05.2022** 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.”*

16. Hence, in view of the authoritative pronouncement of the Hon’ble Supreme Court in the matter of detailed 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 complainant.**

**E. I Direct the respondent to return sale consideration sum of Rs. Rs. 1,11,89,848 received by them from the complainant till date along with prescribed interests.**



17. In the present complaint, the complainant intend to withdraw from the project and is seeking return of the amount paid by it 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)*

18. The complainant was allotted unit no T24-304, tower 24 in the project "Terra" by the respondent-builder for a sale consideration of Rs. 87,88,972/-. It paid a sum of Rs.46,49,299/-which is approx. 52% of the total sale consideration. It is pertinent to mention here that no buyers agreement was executed between parties till date. The complainant requested the respondent to intimate it of the date of delivery as well as the completion of the project work but received no response. It is



pertinent to mention here that complainant went to the construction site and there was no sign of construction. On 04.07.2017, the complainant sent legal notice to the respondent to refund the amount paid by it.

19. The counsel for the complainant contented that after receipt of allotment letter dated 29.10.2012, the complainant allottee made the payment of Rs. 46,49,299/- out of basic sale price of Rs.87,88,972/-. No buyers agreement was executed despite repeated requests and hence, the remaining amount could not be paid. Further, since there was delay in the construction and completion of project , so the complainant allottee filed the instant complaint on 04.12.2018 before the Authority seeking refund of the amount deposited alongwith interest. The OC for the above project has been obtained on 09.12.2021 subsequent to filing of the above complaint and no offer of possession has been made to the complainant till date.

20. The counsel for the respondent contended that due to non-payment of outstanding instalments, the promoter has issued a termination notice on 27.08.2014 after giving a last and final opportunity for making the payment vide letter dated 18.06.2014. The complainant did not execute the BBA despite sending of the same to it on 28.11.2012 (Annexure R2 with the reply). The counsel for the respondent clarified that the total consideration money inclusive of various development and other charges, demanded was Rs.1,22,52,284/- as per buyers agreement



which was never executed. The counsel for the respondent further took a plea that in view of termination of unit way back in 2014, the complaint is time barred.

21. It is pertinent to mention here that the counsel for the complainant argued that said termination notice was never received by the complainant and the respondent has been raising the demand of outstanding amount even in the year 2017 (at page 95 of the reply). In view of the above submission by the counsel for the complainant, the respondent was asked by this Authority vide order dated 11.11.2022 to submit the proof of delivery of the said termination notice alongwith reasons for non-execution of BBA but the same has yet not been received by this Authority.
22. In the light of the above-mentioned facts, the authority hereby directs the promoter to return the amount received by it i.e., Rs. 46,49,299/- with interest at the rate of 10.60% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
23. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by it at the rate of 18% p.a. However, the allottee intend to withdraw from the project and is



seeking refund of the amount paid by it 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., 31.01.2023 is **8.60%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%**.
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 respondent is established. As such, the complainant is entitled to refund the entire amount paid by it at the prescribed rate of interest i.e., @ 10.60% 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.

**E.II Direct the respondent to pay Rs. 10,00,000/- as litigation expenses.**

**E.III Direct the respondent to pay Rs. 5,00,000/- as compensation for mental agony and harassment**

27. 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.* (supra), 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**

28. 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/promoter is directed to refund the entire amount of Rs. 46,49,299/- paid by the complainant along with prescribed rate of interest @ 10.60% p.a. from the date of each payment till the actual date of refund of the deposited amount from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.01.2023