BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**177 of 2020**
First date of hearing:		**03.02.2020**
Date of decision	**:**	**05.01.2023**

Sudha Vats R/o: - House no. 83, Sector-40, Gurugram-122002.	**Complainant**
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**

APPEARANCE:	
Sh. Gaurav Bhardwaj	Advocate for the complainant
Sh. Harshit Batra	Advocate for the respondents

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 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	"Freedom Park Life", Sector- 57, Gurugram
2.	Nature of project	commercial shop
3.	RERA Registered/ Not Registered	Not Registered
4.	Unit no.	FPL-09 [page no. 77 of reply]
5.	Unit measuring	314 sq. ft [page no. 77 of reply]
6.	Date of execution of plot buyer's agreement	Not executed
7.	Date of Allotment Letter	26.10.2009. (page no. 77 of reply)
8.	Possession clause	**Clause 13 of application of allotment.** That Company small endeavor to complete the construction of the said building /shop/Office Space/unit **within a period of 36 months from**

		the date of sanctioning of the building plan and commencement of construction thereafter subject to force majeure and timely payment by the Intending Allottee(s) of sale price, stamp duty and other charges due and payable according to the Payment Plan applicable to him or as demanded by the company
9.	Date of approval of building plans	N/A
10.	Due date of possession	N/A
11.	Total sale consideration	Rs.34,33,590/-
12.	Total amount paid by the complainant	Rs. 32,68,612/- (as alleged by the complainant)
13.	Occupation certificate dated	12.07.2010 [on page no. 81 of reply]
14.	Offer of possession	16.03.2015 (on page no. 101 of reply)

B. Facts of the complaint

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

3. That somewhere around 2009, the respondents advertised about a new project namely "BPTP Freedom Park Life" (**hereinafter called as 'the project'**) located at Sector-57, District Gurugram. The complainant visited the project site and believing the representations, in October 2009, booked

one shop in the said project by paying an amount of Rs.3,03,450/- towards the booking of the said shop to the respondents.

4. That thereafter, on 26.10.2009, the respondents sent an allotment letter thereby allotting one shop bearing no. 'FPL-09' admeasuring 314 sq. ft. super area. Thereafter, the complainant made a payment of almost 75% till 2010 in accordance with the demands raised by the respondents.
5. That subsequent to paying more than 95% of the total consideration amount, the complainant in January 2011 approached the respondents to execute the buyer's agreement and to which the latter kept falsely assuring the former that the agreement would be executed soon.
6. That the complainant has paid an amount of Rs. 32,68,612/- as against the unit in question, as and when demanded by the respondents, as against the total consideration of Rs. 34,33,590/- (inclusive of EDC and IDC). The said amount was paid till 2011.
7. That despite lapse of almost 2.5 years of booking and persistent requests and follow-ups, no agreement was executed by the respondents. Accordingly, the complainant, having no other option again approached the respondent in June 2011 to execute the agreement, but to no avail. On the contrary, they threatened the complainant to cancel the allotment and forfeit entire money upon his failure to make further payments. Having no other option, the complainant again made further payment on 13.06.2011 and 30.06.2011 respectively.
8. That thereafter, the complainant in December, 2012 and in March 2013 again approached the respondents to execute the agreement and inquiring

as to when possession would be handed over as more than 95% payment had already been made, but all in vain as the representatives of the respondents company simply recused from giving a concrete reply, and the complainant was always given vague and misleading assurances on one occasion or the other.

9. That to add to the misery of the complainant, in the year 2014, he came to know that the unit site in question has been subject to dispute since 2012, and litigation was pending w.r.t. the same in Hon'ble High Court of Punjab and Haryana vide CWP no. 22243 of 2012 and the land in question was a part of parking areas and accordingly, it could not be sold by the builder. This left the complainant completely aghast and devastated. As soon as the complainant came to know about the said fact, he immediately rushed to the respondent seeking refund of his money, but again to no avail.

10. That on 24.12.2019, the complainant by way of mail again requested the respondents to either handover possession or to return back his money and also expressed his anguish over severe exploitation at the hands of builder despite making complete payment. The complainant also highlighted the fact that the unit in question was specifically purchased for the future generation of the complainant, but all effort has been rendered futile owing to the treachery and misconduct on the part of respondents.

11. That it is pertinent to mention here that the respondent did not have the requisite approvals to build shops on the land in question as the same land forms a part of parking area which is a part of common areas and despite knowing this, the respondent deliberately concealed the same from the

complainant. Rather upon inquiry, the complainant was assured that the respondent has obtained all necessary government approvals and not only this, the fact that the said land was already subject to litigation had also been concealed by the respondent. It has been specifically ordered by the Hon'ble Punjab and Haryana High Court vide order dated 25.11.2014 in CWP no. 22243 of 2012 that further sale of any common area shall be subject to the outcome of writ petition. This clearly shows that the land was a part of the common areas and could not have been sold and apparently, this seems to be the reason why respondent did not execute the buyer's agreement with the complainant for the unit in question.

12. That the present complaint has been filed under Section 31 read with Section 18(1) in order to seek refund of the principal amount of Rs. 32,68,612/- paid by the complainant along with interest at the rate prescribed as per RERA, 2016 and HRERA Rules, 2017 from the date of receipt of each installment of payment till the date of actual refund, along with compensation for the financial, mental as well as physical loss suffered by the complainant due to the fraudulent acts of the respondents. The complainant has not only been left empty handed but has also been deprived of the benefit of escalation of price of the said unit had they been handed over possession

13. The complainant cannot be expected to wait endlessly for the completion of the project. Hence, the complainant has preferred the present complaint for refund at a prescribed rate of interest.

C. Relief sought by the complainant:

The complainant has sought following relief(s).

i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

ii. Direct the respondent to give Rs. 5,00,000/- as compensation on account of loss/injury as well as mental agony suffered by the complainant.

iii. Direct the respondent to pay litigation charges to the tune of Rs. 40,000/-

D. Reply by the respondents:

14. That the complainant, in September 2009, on his own volition, after making due diligence and after reading, understanding, agreeing and accepting the terms and conditions of the application for allotment ("Booking Form"), applied for booking a commercial shop in the Project-Freedom Park Life, Sector 57, Gurugram, Haryana of the respondent and accordingly made booking by submitting the duly signed application along with the booking amount. It is submitted that Ms Countrywide Promoters Pvt. Ltd. had constituted the respondent Company, HPTP Ltd., to exclusively undertake the sale and marketing of the proposed shop commercial spaces to be developed and constructed at the discretion of the respondent.

15. That vide allotment cum demand letter dated 26.10.2009, the complainant herein was duly allotted shop no. FPL 9 tentatively admeasuring 314 sq. ft. super area. As per the agreed payment schedule a demand for 'within 60 days of booking' was also raised at the time of allotment by the respondent payable by 06.11.2009. It is submitted that the complainant failed to remit the called amount within the stipulated

time period and made part payments on 10.02.2010. In turn, the respondents were forced to issue a reminder letter dated 22.02.2010 requesting the complainant to clear the outstanding. It was after issuance of the said reminder letter that he made part payments on 01.05.2010.

16. It is further submitted that post issuance of last and final opportunity Letter on 09.06.2011 to clear the outstanding payments, the complainant made part payment on 13.06.2011. Thereafter, they issued another last and final opportunity letter and post issuance of the same, the complainant made payment, accordingly and receipt dated 30.06.2011 and 19.08.2011 was issued by the respondent.

17. That in 2012 a Civil Writ Petition no. 22243 of 2012 was filed by Freedom Park Life Residents Welfare Association against the State of Haryana (being one of the respondent) before the High Court of Punjab & Haryana. In the said writ, the Freedom Park Life Residents Welfare Association had inter alia alleged that as per the approved plan, (a) stilt and basement area was to be used for parking purpose; (b) the allottees have also been charged towards construction of those areas. It was averred that the stilted area had been converted into shops and gymnasium etc. and instead of two, only one basement was constructed, even in that very less space has been left for parking purpose.

18. On 08.11.2012, the Hon'ble High Court of Punjab & Haryana passed an order in the interim directing the respondents to not create any third-party interest in the shops etc. constructed in the stilt area and further

at least free parking should be provided for one car, to each allottee in the open area now being used for parking. It is reiterated that the shop in question is not in the common area of the group housing and is duly approved in the site plan dated 23.07.2008.

19. As per the agreed terms of the booking form, two copies of space buyer's agreement were sent to the complainant on 14.03.2013 for execution. It is submitted that the complainant has till date failed to return the agreement to the respondent for execution. The respondent vide reminder letters dated 19.08.2013, 19.09.2013 and 18.10.2013 requested the complainant to clear the outstanding dues. However, he failed to clear the same. Therefore, the respondent were left with no option but to issue final demand notices dated 19.12.2013, 21.01.2014, 02.05.2014 and 17.06.2014 respectively requesting the complainant to clear outstanding dues on immediate basis, however, but he failed to pay the outstanding dues till date.

20. That in CWP No. 22243 of 2012, the Hon'ble High Court of Punjab & Haryana on 25.11.2014 modified its interim order as passed on 08.11.2012 and observed as under :

> *"further sale of any common area to the residents shall be subject to the decision of the writ petition. The building lay out plan, if necessary to be modified in future, shall be revised in terms of the policy dated 28.01.2013".*

21. That post receipt of OC of Tower F on 12.07.2010 of the project freedom park life in which the shop in question is located, possession of shop

FPL-09 admeasuring 314 sq. ft. was offered to the complainant on 11.03.2015. It is pertinent to point out that, in the said offer of possession, it was clearly stated that as the unit was located in the stilt area, though the part of FAR for which all the government fees and charges have been paid at the commercial rate by the respondents but, the conveyance deed, possession and usage of the unit and parking area shall be subject to final outcome of CWP no. 22243 of 2012, pending before the Hon'ble High Court of Punjab & Haryana.

22. That since the complainant failed to clear the dues and take possession, the respondent was forced to issue a reminder vide email dated 23.11.2015 requesting him to clear dues and get the conveyance deed executed. In the meantime, as per the agreed terms of the booking form, the respondents duly raised a demand for VAT on 05.11.2016 payable by 20.11.2016. It is submitted that the complainant has however, failed to pay the VAT charges and clear the previous outstanding dues.

23. That, Freedom Park Life Residents Welfare Association petitioner in CWP 22243 of 2012, filed a contempt petition COCP 396 of 2014 before the Hon'ble High Court of Punjab & Haryana under Section 12 of the Contempt of Courts Act, 1971 by alleging violation of order dated 08.11.2012 passed by the High Court in CWP No.22243 of 2012. The Hon'ble High Court on 30.03.2017 observed as follows:-

"Perusal of the record reveals that indeed an application was moved by the respondents for vacation of the stay order by mentioned the aforementioned facts and it was under these circumstances, the order dated 08.11.2012 was

modified. A perusal of the documents Annexure R-1/1 to R-1/3 also reveals that allotment etc. has been done to the concerned parties in the year 2010. The document Annexure P-3 only confirm the said allotment by handing over of possession. Meaning thereby, no alienation has been done by the respondents during the operation of order dated 08.11.2012"

24. It is the humble submissions of the respondent that booking and allotment for the unit in question were done prior to 08.11.2012. Thus, the respondents had legally and lawfully accepted the booking and allotted the unit in question to the complainant and has not violated order's passed by Hon'ble High Court in the said CWP.

25. That vide emails dated 30.03.2017 and 12.05.2017, the respondents reminded the complainant to clear pending dues with respect to VAT demand immediately. However he failed to clear the same.

26. That, thereafter, Freedom Park Life Residents Welfare Association filed a review petition RA-CR No. 98-CII of 2017 (O&M) before the Hon'ble High Court of Punjab & Haryana. The Hon'ble High Court of Punjab & Haryana on 23.08.2017 observed that:

"This Court does not find any ground to review its order because nothing is brought on record which was not considered by this Court or which was not in the possession of the petitioner and now has come to his knowledge"

27. That vide emails dated 12.10.2017 and 18.06.2018, the respondent again reminded the complainant to clear pending dues with respect to VAT demand immediately, but despite issuance of repeated reminder emails, the complainant failed to clear the pending dues

28. 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

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

D.I Territorial jurisdiction

30. 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

31. 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.

32. 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.

33. 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."

34. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra),*** 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 respondents to return sale consideration received by them from the complainant till date along with prescribed interest.

35. The complainant in October 2009, booked a shop bearing no. FPL-09 admeasuring 314 sq.ft. and paid till date an amount of Rs. 32,68,612/- against the total sale consideration . In the year 2014, the complainant came to know that the unit site in question has been subject to dispute since 2012 and a litigation is pending w.r.t the same in Hon'ble High Court of Punjab and Haryana vide CWP no. 22243 of 2012 and the land in question was a part of parking areas and accordingly, it could not be sold by the builder. It is pertinent to mention here that it has been specifically ordered by the Hon'ble Punjab and Haryana High Court vide order dated 25.11.2014 in CWP no. 22243 of 2012 that further sale of any common area shall be subject to the outcome of the writ petition. This clearly shows that the land was a part of the common area and

could not have been sold and apparently , this seems to be the reason why respondent did not execute the buyers agreement.

36. The counsel for the respondent submitted that provisions of shops in the stilt portion was approved by DTCP in revised building plans in the year 2008 and subsequently an occupation certificate has been obtained from DTCP vide memo no. 3662 dated 12.07.2010. It is also stated that the OC granted by the DTCP also pertains to the shops allotted to the complainant as the 211 dwelling units includes the subject shops as well and not only the flats constructed under the above tower. The possession of the subject shop was offered to the complainant on 16.03.2015. In the said offer of possession , it was clearly stated that since the unit was located in the stilt area , though the part of FAR for which all the government fees and charges have been paid at the commercial rate by the respondent-builder, the conveyance deed, possession and parking area shall be subject to final outcome of CWP no. 22243 of 2012, pending before the Hon'ble High Court of Punjab & Haryana.

37. In the present complaint, the complainant intends to withdraw from the project since the legal status of the unit is not clear 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)

38. 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

39. The authority is of view that the allottee cannot be expected endlessly for making a valid offer of possession and execution of conveyance deed for which substantial consideration amount has already been paid. The authority hereby directs the promoters to return the amount received by him i.e., Rs 32,68,612/-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.

40. **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, allottee intends to withdraw from the project and is seeking refund of the amount paid by him 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.*

41. 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.

42. 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., 05.01.2023 is **8.60%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60 %.**

43. 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 complainant is entitled to refund the entire amount paid by him 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.

H. Directions of the authority

44. 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. 32,68,612/-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 respondents to comply with the directions given in this order and failing which legal consequences would follow.

45. Complaint stands disposed of.

46. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.01.2023