



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1317 of 2022
Date of filing.:	22.07.2019
First date of hearing.:	03.09.2019
Date of decision.:	12.07.2023

Suresh Kumar Burolia,
House No. 835, Sector 7-C
Faridabad, Haryana

....COMPLAINANT

VERSUS

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

....RESPONDENT

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

Hearing: 5th

Present: - Ms. Payal Dev, Counsel for the complainant
 through vc.
 Mr. Hemant Saini, Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 26.05.2022 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 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, Parklands Faridabad.
2.	Name of Promoter	M/s BPTP Ltd.
3.	Nature of the project.	Residential
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	L-50, Ground Floor admeasuring 1418 sq. ft. (Later changed to unit no. PE 191 FF, admeasuring 1775 sq. ft)

6.	Endorsement in favour of complainant	17.12.2010
7.	Date of builder buyer agreement	20.06.2013
8.	Due date of possession	20.06.2015
9.	Total sale consideration	₹34,21,726.72/-
10.	Amount paid by complainant	₹ 33,16,402/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant in the year 2010 had purchased a unit in the real estate project namely "Park Elite Floors" situated at Faridabad from original allottee Mr. Shyam Arora. The unit was transferred in the name of present complainant vide transfer letter dated 17.12.2010. Complainant was provisionally allotted unit bearing no. L-50-Gf admeasuring 1418 sq. ft. Thereafter, complainant unconditionally accepted re-allotment of said unit to another unit bearing no. PE-191-FF, first floor tentatively admeasuring 1175 sq. ft in the same project and further agreed to increase in the basic sale price @ ₹ 2425/- per sq ft. for allotment in second and final phase of allotment which was to be held on 31.08.2011. A floor buyers agreement was executed

Rattise

between both the parties on 20.06.2013 for unit bearing no. PE-191-FF. The basic sale price of the unit was fixed at ₹ 34,21,726.72/-. The respondent issued a confirmation of said change of unit vide letter dated 17.07.2014 in favour of the complainant. Till date complainant has paid ₹ 33,16,500/- to the respondent which is including the amount already paid by the original allottee and excluding transfer charges. As per clause 5 of the buyer's agreement, possession of the unit was to be delivered within 24 months from date of execution of the buyers agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. 24 months from the date of execution of the agreement, the deemed date of possession works out to 20.06.2015. However, respondent failed to offer possession within time period stipulated in the agreement.

4. It is stated that the construction of the project is far from completion. Even after a lapse of more than 7 years from deemed date of possession, 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.


G. Rathwa

C. RELIEF SOUGHT

5. That the complainant seeks following relief and directions to the respondent:-

- i. To refund the paid amount of ₹ 33,16,500/- along with interest as per Section 18 of the RERA Act
- ii. To pay a sum of ₹ 10,00,000/- as compensation in favour of complainant for depriving the complainant of his valuable right.

6. During course of hearing, learned counsel for complainant prayed that matter be disposed of in terms of Section 18 of the RERA Act.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

7. Learned counsel for the respondent filed detailed reply on 09.03.2023 pleading therein:

8. Respondent admits allotment and execution of floor buyer agreement in favour of the complainant. Payment of ₹ 33,16,500/- has also been admitted by the respondent. It is stated that in terms of floor buyer agreement dated 20.06.2013 that respondent proposed to handover the possession of the unit within a period of 24 months from the execution of floor buyer agreement or sanctioning of building plan by the purchaser, whichever is later along with a grace period of 180 days.

9. 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.
10. It has also been stated that complainants have availed a timely payment discount of ₹ 58,239/- from the respondent. Further, complainant is at fault for not honouring the demands raised vide letters dated 03.06.2013 and 10.03.2014.
11. During the course of hearing, Authority inquired about the status of the construction work at the project site and what is the expected timeline within which the respondent/promoter shall offer the possession of the unit to the complainant. To this, the learned counsel for the respondent stated that till date the construction of the project has not been completed and respondent is not in a position to offer possession of the booked floor in foreseeable future. Mr. Hemant Saini, learned counsel for the respondent offered to refund the paid amount along with 9% interest upfront which was outrightly denied by ld. counsel for the complainant

E. ISSUES FOR ADJUDICATION

12. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

F. OBSERVATIONS OF THE AUTHORITY

13. After going through rival contentions of both the parties, Authority observes that there is no dispute with respect to the following facts: that the complainant was provisionally allotted unit bearing no. L-50-GF admeasuring 1418 sq. ft. Thereafter, the complainant was reallocated unit no. PE-191-FF with area admeasuring 1175 sq.ft. A floor buyers agreement was signed between the parties on 20.06.2013 and the sale consideration agreed between the parties was ₹ 34,21,726.72/-, out of which the complainant has paid an amount of ₹ 33,16,500/-. As per clause 5 of the buyer's agreement, possession of the unit was to be delivered within 24 months from date of execution of the buyer's agreement or sanction of building plan whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. However, no offer of possession with respect to the allotted unit has been issued by the respondent to the complainant till date. Respondent promoter has taken a plea that the complainant has failed to honour the demands raised vide letters dated 03.06.2013 and 10.03.2014. Fact remains that respondent has failed to offer possession of the booked unit within the timelines stipulated in the buyer's agreement

and a delay of more than 8 years has already occurred in offering the possession without any reasonable justification.

Findings on the objections raised by the respondent.

F.I Observations regarding the deemed date of possession.

As per clause 5.1 of the floor buyer agreement dated, possession of the unit was to be delivered within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan which ever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. 24 months from the date of execution of the agreement, the deemed date of possession works out to 20.06.2015. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan. The drafting of this clause is vague and uncertain and heavily loaded in favour 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 the unit and to deprive the allottee of his right accruing after delay in delivery possession.

Finding w.r.t grace period: The promoter had agreed to handover the possession of the within 24 months from the date of execution of floor buyer agreement or or sanction of building plan, whichever is later. The agreement further provides that promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate with respect to the plot on which the floor is situated. Since; the later milestone for possession i.e. cor sanction of building plan is vague, ambiguous and arbitrary, the date of execution of floor buyer agreement is taken as the date for calculating the deemed date of possession. As a matter of fact, the promoter did not apply to the concerned Authority for obtaining completion certificate/occupation certificate within the time limit prescribed by the respondent/promoter in the floor buyer agreement i.e immediately after completion of construction works within 24 months. Thus, the period of 24 months expired on 20.06.2015. As per the settled principle no one can be allowed to take advantage of its own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

A handwritten signature in blue ink, appearing to read 'J. Attree', with a horizontal line underneath the name.

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

The due date of possession in the present case as per clause 5.1 is 20.06.2015, 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. The obligation to deliver possession within a period of 24 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 are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the year 2012 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/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (I) (Comm.) No. 88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 has observed that:

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March,2020 in India. The contractor was in breach since september,2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.

The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by September,2019 and is claiming the benefit of lockdown which came into effect on 23.03.2020, whereas the due date of handing over possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, Authority is of view that outbreak of pandemic cannot be used an excuse for non-performance of contract for which deadline was much before the outbreak itself.”

Moreover, the respondent has not given any specific details with regard to delay in payment of instalments by many allottees. 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.

F.II Observations regarding the plea of the respondent that the complainant failed in its obligations to pay the due instalments.

In its written submissions, respondent has alleged that complainant is at fault for not honouring the demands raised on two occasions for which two reminder letters dated 03.06.2013 and 10.03.2014 had been issued to them. A copy of these reminder letters has been annexed at page 58 and 103 of the reply respectively. Vide reminder letter dated 03.06.2013 respondent had raised a demand for an amount of ₹ 5,07,022.47/- and vide demand letter dated 10.03.2014 a demand of ₹ 4,25,770.10/- had been raised from the complainant. On perusal of record it is observed that complainant in present complaint had already paid an amount of ₹ 33,16,500/- to the respondent against basic sale consideration of ₹ 34,21,726.72/- towards the booked unit by the year 2018 itself. Complainant has annexed receipts of the paid amount issued by the respondent beginning from 15.06.2009 till the date of final payment i.e 03.02.2018. Amongst these payment receipts, two receipts have

been issued by the respondent dated 24.06.2013 for a payment of ₹5,08,000/- and another dated 27.03.2014 for a payment of ₹ 4,25,770/-. Upon observation, it is apparently clear that the demand raised by the respondent vide reminder letter 03.06.2013 and 10.03.2014 have been correspondingly paid by the complainant on 24.06.2013 and 27.03.2014 respectively, as per the payment receipts issued by the respondent. Further, during the course of hearing the learned counsel for the respondent did not press upon the issued with respect to the allegation that the complainant is at fault for not honouring the demands raised on two occasions for which two reminder letters dated 03.06.2013 and 10.03.2014 had been issued to them. Therefore, in view of the payment receipts issued by the respondent, Authority is unable to accept the claim of the respondent that the complainant failed to honour the demands raised vide letters dated 03.06.2013 and 10.03.2014.

14. As per section 18 of the RERA Act, 2016, the promoter is liable, on demand to refund the amount paid by the allottee in case the promoter fails to offer possession in accordance with the terms of agreement. Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others" in

CIVIL APPEAL NO(S). 6745 6749 OF 2021 has observed that in case of delay in granting possession as per agreement for sale, allottee has an unqualified right to seek refund of amounts paid to the promoter along with interest. Para 25 of this judgement is reproduced below:

“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.”

15. The project did not get completed within the time stipulated as per the agreement and got delayed by more than 8 years. No offer of possession has been made till date. Further no specific timeline with regards to completion of the project and subsequent offer of possession

has been provided by the respondent. Complainant who has already waited for more than 8 years cannot be asked to wait any further. Learned counsel for the respondent had offered refund of the paid amount along with interest @ 9% per annum payable upfront but said offer was categorically denied by the learned counsel for the complainant. Therefore, Authority finds it to be a fit case for allowing refund of the paid amount along with interest in favour of complainants as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent in timely delivery of possession. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: “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”.



16. The definition of term 'interest' is defined under Section 2(za) 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;

17. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 12.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%. Accordingly, respondent will be liable to pay the complainant interest from the date the amounts were paid by him till the actual realisation of the amount.



18. Hence, Authority directs respondent to refund to the complainant the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount.
19. Authority has got calculated the interest on the total paid amount from the date of respective payments till the date of this order i.e 12.07.2023 at the rate of 10.70% and said amount works out to ₹ 38,00,781/-.
20. Complainant in present complaint has claimed to have paid an amount of ₹ 33,16,500/- to the respondent. Said amount has also been admitted by the respondent. On perusal of receipts it is observed that the paid amount works out to ₹ 33,16,402/-. Out of the total amount of ₹ 33,16,402/-, an amount of ₹ 12,86,248/- had been paid by the original allottee i.e Mr. Shyam Arora till March 2010. Thereafter, complainant paid further amount of ₹ 20,30,154/- to the respondent in respect of the booked unit. Complainant has annexed receipts only pertaining to the amount of ₹ 20,30,154/-. For the verification of amount of ₹ 12,86,248/- no receipts issued by the respondent have been attached. Respondent has admitted to having received the entire payment of ₹ 33,16,402/- which is inclusive of the amount of ₹ 12,86,248/- paid by original allottee. Complainant has attached agreement to sell (undated), annexed at page

62 of complaint file, executed between original allottee and complainant qua the unit in question in which the details of payment made by the original allottee to the respondent have been mentioned. These dates are further corroborated with the demand letters issued by the respondent to the original allottee which are annexed as Annexure R-2 of the complaint file. Further in said agreement to sell no date has been mentioned for payment of an amount of ₹ 3,07,051/- but said demand has been raised by the respondent vide demand letter dated 09.08.2009 to be paid on or before 24.08.2009 to avail timely payment discount. Since payment of ₹ 3,07,051/- has been made without availing discount therefore, the date of payment of said demand is being taken after 24.08.2009 i.e 25.08.2009. Since the total amount has been admitted by the respondent and the payment of ₹ 12,86,248/- has been verified by the demand letters therefore the interest admissible to complainant is being calculated on total paid amount of ₹ 33,16,402/-. It is pertinent to mention that this amount excludes the timely payment discount of 58,239/- availed by the allottee.

21. The complainant is seeking compensation on account of depriving the complainant of his valuable right. It is observed that Hon'ble Supreme Court of 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.

I. DIRECTIONS OF THE AUTHORITY

22. 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 refund the entire amount of ₹ 71,17,183/- (till date of order i.e 12.07.2023) to the complainants in respective complaints.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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



.....
NADIM AKHTAR
[MEMBER]



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