



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	615 of 2021
Date of filing:	10.06.2021
Date of first hearing:	27.07.2021
Date of decision:	13.04.2023

Ruma Tanwar W/o Sh. Kamal Singh Tanwar & Kamal Singh Tanwar S/o Lt. Jagram, Both R/o House No. 1363, Sector-37, Faridabad, Haryana-121003

....COMPLAINANTS(S)

VERSUS

1. BPTP Limited
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

2. Countrywide Promoters Pvt Ltd
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

....RESPONDENT(S)

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

Present: - Mr. Jai Prakash, Counsel for the complainants through VC.

Mr. Hemant Saini, Counsel for the respondent.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Initially present complaint dated 10.06.2021 has been filed by complainants 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 complainants, 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	Discovery Park, Sector-80 Faridabad.
2.	RERA registered/not registered	Registered vide 297 of 2017 for an area of 10.64 acres.
3.	DTCP License no.	44 of 2008

	Licensed area	16.331 acres
4.	Unit no.	K-1501
5	Unit area	1625 square ft (Super Area)
6.	Date of allotment	05.11.2012
7.	Date of builder buyer agreement	25.12.2012
8.	Due date of offer of possession (36 months)	25.12.2015 (grace period of 6 months is not included)
9.	Possession clause in BBA (clause 3.1)	Subject to force majeure as defined in clause 10 and further subject to the purchasers having complied with all its obligations under the terms and conditions of this Agreement and the purchasers not being in default under any of the provisions of this Agreement including but not limited to timely payment of each and every instalment of Total Sale Consideration including DC, stamp duty and other charges and also subject to the purchasers having complied with all formalities or documentations etc., as prescribed by the Seller Confirming Party, the Seller/Confirming Party proposes to handover the physical possession of the said unit to the Purchaser(s) within a period of thirty six (36) months from the date of sanctioning of building plan or execution of the Flat Buyers Agreement whichever is later (commitment period). The Purchaser(s) further agrees and

		understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of said commitment period to allow for filing and pursuing the grant of an occupation certificate from DTCP under the Act in respect of the project Discovery.
10.	Basic sale price	₹ 58,50,000/-
11.	Amount paid by complainants	₹ 64,53,936/-
12.	Offer of possession	15.11.2018

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants in the year 2012 booked a flat in the respondent's project Discovery Park, Sector- 88, Faridabad by paying Rs. 4,52,307/- following which complainants were allotted unit no. K-1501 having area of 1050 sq. ft. at the rate 3600 @ per square ft vide letter dated 05.11.2012.
4. Complainants entered into builder buyer agreement with the respondent on 25.12.2012. As per clause 1.14 and 3.1 of the flat buyer agreement, respondents were to deliver possession of the allotted flat within a period of 36 months from the date of execution of floor buyer agreement. As per builder buyer agreement the basic sales price of the said unit was Rs. 58,50,000/-. Against said amount, complainants have

paid an amount of Rs. 64,53,936/-. It is stated that complainants have paid excess amount of Rs. 6,03,936/-.

5. That construction work has not been completed and the project remains incomplete as on date. Respondents have received an amount of Rs. 2,06,180/- on account of club membership charges but club is non-existent in the project till date.
6. Complainants have sent numerous e-mails to the respondent to enquire about the construction ranging from 21.03.2017 to 23.10.2018. Respondents have raised an illegal demand of Rs. 99,01,044.40/- against basic sales price of Rs. 58,50,000/-. Said demand includes a demand of Rs. 3,09,270 on account of Reserve Car Parking charges, enhancement in basic sales price from Rs. 58,50,000/- to 69,64,217/-, VAT amounting to Rs. 65,319.89/- and stamp duty of Rs. 3,38,000/-.
7. That complainants have sent a legal notice dated 01.10.2020 to the respondents thereby calling the respondents to deliver the possession of allotted flat and to pay interest @ 18% p.a. and compensation on the deposited amount. Respondents chose not to reply to the said legal notice.
8. The respondents have not offered the possession of the flat, therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

9. It is, therefore, most respectfully prayed that this Hon'ble Authority may be pleased to:
- i. Pass an order thereby directing the respondents to refund the deposited amount of Rs. 64,53,936/- along with the interest @18%per annum from the date of depositing the said amount till realization of the said amount to the petitioners.
 - ii. Pass an order thereby directing the respondents to get the construction/finishing work complete and to make the payment of 18% per annum upto the date of delivering of possession from Dec.24, 2015.
 - iii. Pass an order thereby directing the respondents to pay the compensation amount of Rs. 20,00,000/- for causing mental agony, harassment and causing financial losses to the petitioners.
 - iv. Pass an order thereby declaring the statement of account as elucidated in letter Dt. 26/12/2019 as null and void.
 - v. Costs of present petition may kindly be awarded in favor of the petitioners and against the respondents.
 - vi. Any other relief which this Hon'ble Authority deems fit and proper be granted in favor of the petitioners and against the respondents.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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

10. That Discovery Park is a RERA registered project bearing no. 297 of 2017 dated 16.10.2017. Respondent is entitled to complete the project within validity period of RERA registration which is till 12.10.2021.
11. That complainants have been offered possession on 15.11.2018 after receipt of occupation certificate dated 31.10.2018. Complainants have failed to make payment within stipulated time after which various reminder letters dated 27.12.2017, 20.02.2018, 09.04.2018, 04.07.2018 and 24.08.2018 were sent.
12. That respondents proposed to hand over the possession of the unit in question within 36 months from the date of sanctioning of building plan or execution of FBA, whichever is later along with additional 180 days grace period. Possession timelines of the unit are dependent on force majeure clauses and timely payments of instalments and as per clause 3.3 of FBA it was agreed between parties that in case respondent failed to handover possession within agreed period, the respondent shall be liable to pay to the complainants, compensation calculated @ Rs. 5/- per sq. ft of super area for every month of delay, until actual date fixed by the respondent to handover the possession to the complainants. As per clause 3.5 of FBA it was agreed that if respondent fails to complete construction due to force majeure circumstances then respondents shall be entitled to reasonable extension of time for completion of construction.

13. That the basic sales price as stated in the agreement cannot be absolute as the cost of the unit largely depend upon market forces.
14. That no legal notice was sent to the respondent.
15. Complainants are at default as per section 19(6) and 19(7) by not honoring the demand letters issued in accordance of builder buyer agreement.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANTS AND RESPONDENT

16. During oral arguments learned counsel for the complainants insisted upon refund of paid amount with interest stating that possession has been delayed by the respondent for around 3 years and thereafter possession was offered on 15.11.2018 but said offer was not acceptable to complainants due to issue of illegal demands raised with it. Several e-mails and legal notice were sent to respondent for justification of same but no response has been received from respondents. He requested that present complaint be restricted to relief of refund amount along with interest. Learned counsel for the respondent reiterated arguments as were submitted in written statement.

F. ISSUES FOR ADJUDICATION

17. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

18. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) Admittedly, respondent was under obligation to deliver possession on 25.12.2015 in terms of clause 3.1 of builder buyer agreement dated 25.12.2012 but possession was offered to complainants after delay of more than 3 years on 15.11.2018 after obtaining occupation certificate on 31.10.2018. Fact remains that respondent has failed to offer possession of the booked unit within the timelines stipulated in builder buyer agreement and a delay of more than 3 years has occurred in offering the possession that too without any reasonable justification. 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 promoter fails to offer possession in accordance with the terms of agreement. In this case, due date of offer of possession was 25.12.2015 whereas possession has been offered on 15.11.2018. There is thus an inordinate delay of more than 3 years in offering possession.

(ii) **Finding w.r.t grace period:** the promoter had agreed to handover the possession of the within 36 months from the date of sanctioning of building plan or execution of the flat buyer agreement whichever is later. Clause 3.1 of builder buyer agreement further provides that the Purchaser(s) further agrees and understands that the Seller/ Confirming Party shall be entitled to a grace period of (180) one hundred and eighty days, after the expiry of said commitment period to allow for filing and pursuing the grant of an occupation certificate from DTCP. Since; the milestone for possession i.e., sanctioning of building plans by concerned department 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. Thus, the period of 36 months expired on 25.12.2015. 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.

(iii) Complainants in their complaint has referred to a legal notice dated 01.10.2020 wherein they have raised their grievances pertaining to increase in basic sale price of unit and other illegal charges raised along with offer of possession to the tune of Rs 34,75,134/-. As on date of offer of possession, respondents were already in receipt of Rs 64,35,436/- which is evident from statement of account annexed along with offer of possession as Annexure-A. Said amount is already more than the basic sale price of Rs 58,50,000/- provided in builder buyer agreement. However, respondents have again raised additional demand of Rs 34,75,134/- making total sale consideration to Rs 99,10,570/-. Complainants were not provided any justification for the additional demands raised along with offer of possession and for that reason the complainants did not accept possession and filed present complaint seeking refund of paid amount. It is noteworthy to mention here that respondents have almost hiked doubled the total sale consideration of the unit from what was basic sale price, that too without any justification and consent of the allottee. Allotees chose the unit considering their own financial stability and pay for the same in accordance with the terms and conditions of builder buyer agreement. A hike in the price of the unit which is almost double of its basic sale price is

usually not an acceptable one, besides the fact of delay of around 3 years in offering the possession. In event of such circumstances, allottee/complainants cannot be forced to accept possession of the unit. It is to mention here the judgement dated 02.04.2019 passed by Hon'ble Supreme Court in Civil Appel no. 12238 of 2018 titled as Pioneer Urban Land & Infrastructure Ltd vs Govindan Raghavan whereby it is held that the flat purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the agreement expired. Relevant part of said judgement is reproduced below for reference:-

"9. We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the 22 Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest."

(iii) 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. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. 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."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking

refund of the paid amount along with interest on account of delayed delivery of possession.

19. This project did not get completed within the time stipulated as per agreement and got delayed by few years. Possession was offered to complainants on 15.11.2018 along with additional demands of Rs 34.75 lacs. Said offer was not accepted by complainants due to issue of illegal hefty demands. Further, there is nothing on record to convince the Authority regarding any force majeure conditions that caused an inordinate delay in handing over of possession. Therefore, Authority finds it to be fit case for allowing refund along with interest in favor of complainant. The complainants have sought the relief of interest @ 18% per annum, however, as per Section 18 of Act, interest shall be awarded at such rate as may be prescribed.

20. 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;

21. The legislature in its wisdom in the subordinate legislation under the provisions 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.

22. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 13.04.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

23. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is 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. Thus, respondent will be liable to pay the complainants interest from the date amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of Rs 62,50,397.5/- 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. Authority has got calculated the total amount along with interest calculated at the rate of 10.70% till the date of this order and total amount works out to Rs 1,28,13,563.5/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 13.04.2023
1.	452307	26.10.2012	506775
2.	452308.40-22615.40 TPD=429693	02.01.2013	472872
3.	100000	29.01.2013	109257
4.	503153.85-30153.85 TPD=473000	29.01.2013	516787
5.	872033.85-30153.85 TPD=841880	19.03.2013	907722
6.	142000	19.04.2013	151815
7.	730153.85-30153.85 TPD=700000	19.04.2013	748384
8.	242000	29.05.2013	255889
9.	630153.85-30153.85 TPD=600000	29.05.2013	634437
10.	430153.85-30153.85 TPD=400000	07.09.2013	411115

11.	442000	07.09.2013	454282
12.	630153.85--30153.85 TPD=600000	07.01.2014	595213
13.	241825	07.01.2014	239896
14.	550000	11.03.2014	535454
15.	17193	12.03.2014	16733
16.	18499.5	26.12.2019	6535
17.	Total=62,50,397.5/-		Total=6563166/-
18.	Total Payable to complainant (62,50,397.5+6563166)=	12813563.5/-	

25. Complainants have availed timely payment discount amounting to Rs. 2,03,538.5/-. Said amount will be deducted while granting refund to the complainants. Section 18 of RERA Act, 2016 provides for return of amount to complainants on demand in case promoter fails to complete or unable to give possession of apartment, building or plot in accordance with terms of agreement for sale the amount received by him in respect of said apartment, building or plot. Component of timely payment discount has not actually been paid by the complainants rather it is a discount given by the respondents for timely payment of due instalments by the complainants. Said discount cannot be said to have been paid by the complainants and is liable to be deducted while granting refund.

26. Further, complainants claim to have been paid an amount of Rs. 64,53,936/- as per the statement of accounts dated 26.12.2019 but they have annexed receipts amounting to Rs. 64,35,436.5/- only. Remaining amount of Rs. 18,499.5/- will be taken from the date of statement of accounts dated

26.12.2019. Interest on Rs. (64,35,436.5- 2,03,538.5=62,31,898/-) is calculated from the actual date of payments and on amount of Rs. 18,499.5/-, interest is calculated from the date of statement of accounts i.e, 26.12.2019.

27. The complainants are also seeking compensation on account of mental agony, harassment and financial losses. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2017 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.

H. DIRECTIONS OF THE AUTHORITY

28. 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 ₹ 1,28,13,563.5/- to the complainants in equal share.

(ii) A period of 90 days is given to the respondents 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.

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

Nadim

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NADIM AKHTAR
MEMBER]

Geeta

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