

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

Complaint no.	:	594 of 2022
Date of decision	:	22.09.2023

Ankur Khurana R/o - Flat no. 601, Sidhi Vinayak Building Union Park Road 1, Khar(W), Mumbai - 400052		Complainant
Versus		
BPTP Ltd., R/o: - M-11, Middle Circle, Connaught Circus, Delhi - 110001		Respondent

CORAM:		
Shri Sanjeev Kumar Arora		Member
APPEARANCE:		
Mr. Shubham Chopra (Advocate)		Complainant
Mr. Harshit Batra (Advocate)		Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint dated 02.03.2022 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.	RERA registered/not registered	Registered 299 of 2017 dated 13.10.2017	
4.	DTPC License no.	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 PVT. LTD and 3 others	COUNTRYWIDE PROMOTERS PVT LTD and 6 others
	Licensed area	23.18 acres	19.74
7.	Unit no.	T-22-1604, Tower 22 [As per page no. 42 of complaint]	
8.	Unit measuring	1691 sq. ft. [As per page no. 42 of complaint]	
9.	Date of execution of Flat buyer's agreement	12.03.2013	

		(As per page no. 37 of complaint)
10	Date of building plan	21.09.2012 (Taken from previous files)
11.	Possession clause	<p>5. Possession</p> <p>5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</p> <p>1.6 "Commitment Period" 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 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.</p>
12.	Due date of possession	12.09.2016



		<p>(Calculated from the date of execution of buyer's agreement, being later)</p> <p>(Inadvertently 12.03.2017 has been mentioned as due date of possession but the correct due date of possession is 12.09.2016 and reasoning for the same has been provided in column no. 17 "Grace period")</p>
13.	Basic Sale Price	Rs 1,03,73,864/- [as stated in court proceeding]
14.	Total amount paid by the complainant	Rs. 98,26,460/- (as alleged by the complainant)
15.	Occupation certificate dated	Not obtained
16.	Offer of possession	Not offered
17	Grace period	<p>In the present case, the promoters are seeking a grace period of 180 days for making of occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of documents on record that the promoter applied for occupation certificate only on 18.01.2021 which is later than 180 days from the due date of possession i.e., 12.09.2016. The clause clearly implies that the grace period is asked for filing and pursuing the occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days, it do not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 12.09.2016.</p>

B. Facts of the complaint

7. That the complainant in the year 2012 was looking to purchase a residential property and was approached by the respondent for purchasing a unit in the residential project being developed by the respondent named 'Terra' situated at Sector 37-D, Gurugram, Haryana. Based on the various representations made by the respondent, he paid an amount of Rs. 6,00,000/- towards booking a unit in the project on 07.09.2012. In furtherance of the same, he submitted a booking application form to the respondent on 07.09.2012 for booking a unit admeasuring 1,691 sq. ft., in the project being developed by the respondent. That he had booked the unit under a construction linked payment plan.
8. Thereafter, the respondent issued a confirmation of unit selected for allotment vide letter dated 29.10.2012. That after collecting a substantial amount the of Rs. 18,12,109/- towards consideration of the unit, the respondent issued the allotment letter dated 07.12.2012. The respondent after a delay of 3 months and after collecting a substantial amount of the consideration, executed a flat buyer's agreement dated 12.03.2013.
9. That as per clause 1.6 read with clause 5.1 of the agreement, the possession of the unit was promised to be offered within 42 months from the date of approval of the building plan or execution of the agreement, whichever is later, along with a grace period of 180 days for making offer of possession of the Unit. That the building plan for the project was

approved on 21.09.2012 and the agreement was executed on 12.03.2013. Thus, the possession of the Unit was promised to be offered to him latest by 12.09.2017.

10. The respondent has collected an amount of Rs. 98,26,460/- against consideration of the unit from the complainant. However, the Respondent failed to offer possession of the unit to the complainant within the time promised i.e. by 12.09.2017 or even within a reasonable period thereafter.
11. It is pertinent to submit that the respondent has till date failed to offer possession of the unit to him. The respondent despite an inordinate delay of more than 4 years from the promised date of possession as per the agreement has till date failed to offer possession. Furthermore, when he enquired about the possession and the occupation certificate, the respondent has mentioned that it has still not received the occupation certificate with respect to the tower in which the complainant has booked his unit. That as per the statement of accounts dated 27.01.2022, the respondent has collected an amount of Rs. 98,26,460/- against consideration of the unit from the complainant.
12. It is pertinent to submit that despite the inordinate delay of more than 4 years from the promised date of possession as per the agreement, the respondent has failed to complete the construction of the unit nor have they offered possession of the unit to the complainant till date. That the

respondent has failed to obtain the occupation certificate and offer possession of the unit till date.

13. It is stated that he had booked the unit in the project in the year 2012 and since then he has eagerly awaited possession of his unit. Therefore, despite the inordinate delay that has been caused by the respondent, he seeks possession of the unit along with appropriate compensation for the period of delay caused by the respondent.

C. Relief Sought

14. This Authority may be pleased to direct the respondent as follows:

- a) Direct the respondent to offer possession of the unit complete in all respects and in conformity with the buyer's agreement and for the consideration mentioned therein, with all additional facilities with warranties and as per quality standards promised and execute all necessary and required documents in respect of the unit in favor of the complainant
- b) Direct the respondent to pay interest @ 9.30% per annum on the amount deposited by the complainant with the respondent with effect from the date of delivery promised in the agreements, till the date of execution of the sale deed in the favor of the complainant;

- c) Direct the respondent, to pay a sum of Rs. 5,00,000/- to the complainant towards compensation for mental agony caused by the respondent;
- d) Direct the respondent, to pay a sum of Rs. 2,00,000/- to the complainant towards litigation costs.

D. Reply by the respondent

15. That it is submitted that the respondent had diligently applied for Registration of the Project in question i.e. "Terra" located at Sector-37D, Gurugram including Towers-T-20 to T-25 & EWS before this Hon'ble Authority and accordingly, Registration Certificate dated 13.10.2017 was issued by this Hon'ble Authority. It is submitted that the construction of the unit of the complainant as well as the tower in which the said Unit is situated has been duly completed by the respondent in terms of the FBA. Subsequent to which an application for the grant of Occupancy Certificate ("OC") has been applied by the Respondent to the Department of Town and Country Planning ("DTCP"), Haryana, on 18/01/2021. It is pertinent to mention herein that prior to the receipt of OC the Respondent shall be lawfully bound to not to release the offer of possessions to the complainant for the unit in question.
16. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the Court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same tantamount to fraud not

only against the Respondent but also against the adjudicating Authority and hence the Complaint is liable to be dismissed in limine.

17. The complainant has further attempted to conceal from this Hon'ble Authority that the construction of the Unit of the Complainant as well as the tower in which the said Unit is situated has been duly completed by the Respondent in terms of the FBA. Subsequent to which an application for the grant of Occupancy Certificate ("OC") has been made by the Respondent to the Department of Town and Country Planning ("DTCP"), Haryana, on 18/01/2021. That agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented Flat Buyer Agreement (hereinafter referred to as the "FBA") dated 17.03.2013 executed by the Complainant out of his own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them. In terms of the Haryana RERA Rules, the Government prescribed the agreement for sale and specified the same in Annexure A of the Rule 8(1).

18. The detailed relief claimed by the Complainant goes beyond the jurisdiction of this Hon'ble Authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainant. The complainant while alleging that the Respondent have delayed the Project chose for the selective reading of the clauses of the FBA. Clause 5.1 read

with clause 1.6 of the FBA evince the timelines for the possession whereby it has been agreed by the Complainant that the Respondents, subject to Force majeure, as defined in Clause 10 of the FBA, proposes to handover possession within 42 months from the date of sanction of building plans or execution of FBA, whichever is later, with an additional grace period of 180 days.

19. It is pertinent to mention herein that the building plans were sanctioned on 21.09.2012, whereas, the FBA was executed on 17.03.2013. Therefore, in view of the clause 5.1 r/w Clause 1.6 r/w Clause 10 of the agreement, the due date of possession arrives out to be 17.03.2017 i.e. 42 months from the date of execution of the FBA in addition to further grace period of 180 days, which is further subject to force majeure. In addition to aforesaid, the construction was also affected on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide its order NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the Respondent.
20. Further, the Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued

press note vide which the construction activities were banned within the Delhi-NCR region. The ban was commenced from 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018. Thereafter, in 2019, the Hon'ble Supreme Court of India on 04/11/2019, in M.C. Mehta v. Union of India banned all the construction activities. The said ban was partially lifted by the Hon'ble Supreme Court on 09/12/2019 whereby relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm. whereas the complete ban was lifted by the Hon'ble Apex Court on 14/02/2020.

21. It is imperative to mention herein that the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity crunch and non-funding of real estate projects and delay in payment of installments by customers etc. were the reasons for delay in construction and after that Government took long time in granting necessary approvals owing to its cumbersome process. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site. It was communicated to the Complainant vide email dated 26.02.2020 that the construction was nearing completion and the Respondent was confident to handover possession of the unit in question

by March 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), construction came to a halt and it took some time to get the labour mobilized at the site.

22. It is humbly submitted that despite all aforesaid force majeure circumstances the Respondent has duly completed the construction of project as well as of the tower in which the unit is located has been completed and has also made an application for the grant of the Occupancy Certificate ("OC") to the Department of Town and Country Planning ("DTCP"), Haryana, on 18/01/2021. It is pertinent to mention herein that prior to the receipt of OC the Respondent shall be lawfully bound to not to release the Offer of Possessions to the Complainant for the Unit in question.
23. All the averments in the complaint are denied in toto.
24. Copies of all the relevant documents have been duly 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.

E. Jurisdiction of the authority

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all

purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

The 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

26. So, in view of the provisions of the act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances.

27. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the Unit 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. So, the due date of subject unit comes out to be 12.09.2016 as is calculated from date of execution of agreement being later.

In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 12.09.2016. The respondent is claiming benefit of NGT orders and various other orders which came into effect in the year 2018 whereas the due date of handing over of possession was much prior to the event of those stay orders. Therefore, the authority is of the view that outbreak of the same cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the

mentioned orders itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession

28. Further in the judgement of the **Hon'ble Supreme Court of India in the case of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Civil Appeal no. 6745-6749 of 2021)**, 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"

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate and proviso to section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed 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.

30. 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.
31. 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., 22.09.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
32. The definition of term 'interest' as defined under section 2(z) of the act provides that 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. The relevant section is reproduced below:

"(z) "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;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
34. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 read with 1.6 of the agreement executed between the parties on 12.03.2013, the possession of the subject apartment was to be delivered within stipulated time i.e., 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 i.e., by 12.09.2016. The offer of the said unit has been not been made till date and the same has been on record as the OC for the present tower has not been obtained. The respondent has delayed in offering the possession and till now the same has not been offered.

35. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 12.09.2016 till the date of valid offer of possession plus two months or actual handover of possession whichever is earlier at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

F.II Direct the respondent to award compensation of Rs. 5,00,000 + 2,00,000/-

36. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. **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 & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the

complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority

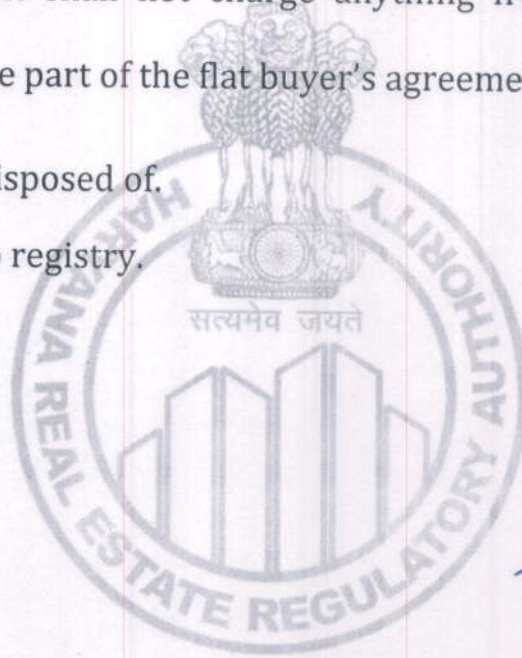
37. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

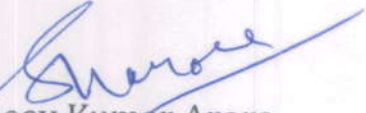


- i. The respondent is directed to handover the possession of the unit within 30 days from the date of receipt of occupation certificate.
- ii. The respondent is directed to pay delayed possession charges to the complainant at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them from the due date of possession i.e., 12.09.2016 till the date of valid offer of possession plus two months or actual handover of possession whichever is earlier.
- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.



- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vi. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
38. Complaint stands disposed of.
39. File be consigned to registry.




Sanjeev Kumar Arora
Member

HARERA

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.09.2023