

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

Complaint no.: 5879 of 2022
Date of decision: 29.11.2023

Mrs. Vandana Sharma

Address:- F-25 Hauz Khas Enclave, New Delhi

Complainant

Versus

BPTP Limited

Address:- M-11, Middle Circle, Connaught Place
Circus, New Delhi-110001

Countrywide Promoters Private limited

Address:- M-11, Middle Circle, Connaught Place
Circus, New Delhi-110001

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sumit Singh

Advocate for the complainant

Shri Harshit Batra

Advocate for the respondents

ORDER

1. The present complaint dated 30.08.2022 has been filed by the complainant 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Project and unit 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 tabular form:

Sr. No.	Particulars	Details
1	Name of the project	"Amstoria" Sector- 102, Gurugram
2	Allotment letter	07.07.2011
3	Date of execution BBA	05.05.2013
4	Unit no.	D-125 SF 2 nd floor,
5	Super area	1770 sq. ft.
6	Possession clause	5.1 <i>Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having</i>

		<p><i>complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.</i></p>
7	Grace period	Not allowed
8	Date of sanction of building plan	05.10.2012
9	Due date of possession	05.05.2015
10	Sale consideration as per BBA at page 63 of complaint.	Rs. 64,00,002/-
11	Total amount paid by the complainant	Rs.28,28,212

12	Occupation certificate on	15.07.2019
13	Offer of possession	Not offered
14	Reminders	07.03.2018, 09.04.2018
15	Last and final opportunity dated	04.08.2018
16	Termination letter	05.03.2021 [Page 105 of reply]
17	Legal notice sent by the complainant	06.04.2021

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That upon receipt of the said booking amount of Rs. 6,40,000/- the Respondent No. 1 again raised a demand for Rs. 6,40,000/- being 10% of the Basic Sale Price and the said amount has been paid by the Complainant against which the Respondent No. 1 issued a payment Receipt for a sum of Rs. 6,40,000/- bearing No. 2011/1400001704 dated 19.04.2011.
- ii. That upon receipt of the sum as mentioned above, to the tune of Rs. 12,80,000/- in aggregate, being 20% of the Basic Sale Price, the Respondent No. 1 (M/s BPT Ltd.) booked a Unit No. D-125, situated on the Second Floor, having built-up area measuring 1770 Sq. Ft. (hereinafter referred to as the Said Apartment) in its project known as 'AMSTORIA", Sector -102, Gurugram, Haryana and issued the Allotment Letter dated 07.07.2011 in favour of the

- Complainant. The Respondent No. 1 simultaneously raised a further demand for a sum of Rs. 6,72,980.14. The Complainant in response, paid an amount of Rs. 6,41,136/- against which the Respondent No. 1 issued a payment Receipt for a sum of Rs. 41,136/- bearing No.2011/1400013740 dated 22.07.2011 and further issued a payment Receipt for a sum of Rs. 6,00,000/- bearing No. 2011/1400013743 dated 22.07.2011.
- iii. That the Respondent Company No. 1 (M/s BPTP Ltd.) vide its Demand Letter dated 03.08.2011 raised further demand for a sum of Rs. 8,84,906.64 and in the said Letter, the Respondent No. 1 informed the Complainant and also assured the Complainant in effect that "now on achievement on this Landmark "At the Start Of Construction". That on the basis of the aforesaid assurances and undertakings forwarded by the Respondent No. 1 with regard to the construction of the Said Apartment, the Complainant again paid the demanded sum to the tune of Rs. 8,84,904.64 to the Respondent No. 1 on 24.08.2011 against which the Respondent No. 1 issued payment Receipt bearing No. 2011/1400018603 dated 26.08.2011 for this amount.
- iv. That as per the letter dated 03.08.2011, the Respondent No. 1 informed the Complainant that the construction work has commenced and during this period, the Respondent No. 1 misled the Complainant for extracting money from the Complainant. That after expiry of more than 6 (Six) years, the Respondent No. 1 with its dishonest intention again tried to mislead the Complainant by issuance of demand letter dated 03.08.2017 wherein it stated that

- "we have achieved landmark on basement slab" and raised a further demand for a sum of Rs. 9,31,466.64 including 10% of Basic Sale Price and 50% of DC.
- v. That the Complainant had paid a sum of Rs. 28,28,212.51 upto 07.08.2017 in respect of the Said Apartment to the Respondent No. 1 within the stipulated period as and when demanded by the Respondent No. 1 and the respondent no 1 also charges an interest 18% p.a.
- vi. That despite repeated visits of the Complainant to the office of the Respondents and also the site of the Said Project, the Respondents did not give any clear picture with regard to the inordinate delay and non-completion of the Said Project to the Complainant. The vital information in this regard remained a closely guarded secret with the Respondent(s). However, the Respondents did not shirk from continuing to raise further demands on the Complainant with the result that even in the Said Project wherein the amount paid by the Complainant is construction linked, whereas the Said Project continued to remain incomplete, despite the Complainant having paid 44% of the Basic Sale Price as demanded by the Respondent(s) on or before 07.08.2017.
- vii. That it is submitted that the Respondents never started the construction and raised the demand to the Complainant by giving the forged information and collected the money from the Complainant. That as per clause 5 of the agreement, the Respondent(s) were required to handover the possession of the

- Apartment to the Complainant within a period of 24 months from the date of execution of the said agreement or date of sanction of building plan whichever is later.
- viii. The Complainant through her counsel got issued a legal notice dated 06.04.2021 to the Respondents in reply to the termination letter dated 05.03.2021 and till date the Complainant has not received any response from the Respondents implying tacit admission of their utter and total failure to complete the construction and handing over of the possession to the Complainant within the time stipulated as per Clause 5 of the Floor Buyer's Agreement dated 05.05.2013.
- ix. That the Complainant is aggrieved at being misled and in the process being subjected to extreme harassment and mental torture at the hands of the Respondent(s) despite having made the payment of 44% of the Basic Sale Price for the Said Apartment as per the demands raised by the Respondent(s).
- x. The Complainant, therefore, are entitled to penal interest for the entire period of delay on the part of the Respondent(s) @ 18% p.a. (at the rate of Eighteen Percent per annum) i.e., at the rate of interest which has been applied by the Respondent(s) against the Complainant in the cases of delay in payment on the part of the Complainant.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
- (i) Direct the respondent to refund the total amount along with interest at the prescribed rate.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply filed by the respondent

6. The respondent had contested the complaint on the following grounds:
 - i. It is submitted that the Complainant has approached this Authority for redressal of their alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of 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 amounts to fraud not only against the Respondents but also against the Court and in such situation, the Complaint is liable to be dismissed at the threshold without any further adjudication.
 - ii. It is pertinent to point out that the Complainant knowingly and voluntarily has annexed and relied upon receipts dated 27.11.2010 and 22.12.2010 which was issued against customer code 129634 and has stated that she has paid a total amount of Rs. 28,28,212.51 to the Respondent for unit bearing no. D-125-SF. In this regard it is submitted that the cheque bearing no.067457 for Rs. 5,40,000 got dishonored on presentation on 11.12.2010. Further, the cheque bearing no. 067456 was never encashed by

the Respondent. The Complainant should be put to strict proof over the same. Thus, the Complainant has only paid Rs. 21,92,128.52 to the Respondent which is inclusive of Brokerage of Rs. 3,20,000.

- iii. That the Complainant has misrepresented this Authority that the possession of the unit was to be delivered within 24 months from the date of execution of the FBA, however it is submitted that the complainant at the time of the booking as well as FBA was aware of the fact that the possession timeline of the unit was dependent on force majeure clause as well as timely payment of each installment. It is further submitted that the complainant is an abysmal defaulter.
- iv. That the Complainant falsely stated in the present complaint that the timely payments were made by the Complainant as and when demanded by the Respondents, however, as detailed in the reply to list of dates, it is submitted that the Complainant made defaults in making timely payments.
- v. That the Complainant has concealed the fact that they have committed defaults in making timely payments of various installments within the stipulated time despite having clearly agreed that timely payment is the essence of the agreement between the parties as is evident from Clause 7.1 of the FBA.
- vi. That the Complainant has further concealed from this Authority that the Respondents being a customer centric organization vide numerous emails has kept updated and informed the Complainant about the milestone achieved and progress in the

developmental aspects of the project. The Respondents vide various emails has shared photographs of the project in question. Respondents have always acted bonafidely towards its customers including the Complainant, and thus, has always maintained a transparency with regard project progress. In addition to updating the Complainant, the Respondents on numerous occasions, on each and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance. However, notwithstanding the several efforts made by the Respondents to attend to the queries of the Complainant to their complete satisfaction, the Complainant erroneously proceeded to file the present vexatious Complaint before this Authority against the Respondents.

- vii. That the Complainant in her Complaint has alleged that an amount of Rs.28,28,212/- shall be refunded to her with interest. It is humbly submitted before this Authority that the actual amount paid by the Complainant is Rs. 21,91,128.50/- which is inclusive of the brokerage amount of Rs.3,20,000/-. That without prejudice to the rights of the Respondent, refund if allowed should be of the actual amount paid by the Complainant after forfeiture of earnest money and other charges as per the Floor Buyer's Agreement duly executed by both the parties.
- viii. The Complainant duly executed the FBA on 05.03.2013 out of her own free will and without any undue influence or coercion. The building plan was sanctioned on 19.09.2012 and the FBA was executed on 05.03.2013. Hence, the possession was to be handed

over within 24 months of the sanction of the building plan along with 180 days grace period.

- ix. It is pertinent to mention that on 16.03.2010, DTCP, Haryana (the statutory body for approval of real estate projects) issued Self-Certification policy vide Notification dated 16.03.2010. Respondents in accordance with the policy and other prevailing laws submitted detailed drawings and designs plans for relevant buildings along with requisite charges and fees. In terms of the said Policy, any person could construct building in licensed colony by applying for approval of building plans to the Director or officers of the department delegated with the powers for approval of building plans and in case of non-receipt of any objection within the stipulated time, the construction could be started. The building plans were withheld by the DTCP, Haryana despite the fact that these building plans were well within the ambit of building norms and policies. That the Respondents applied for approval of building plans under the Self Certification Scheme. Although the department did not object to the building plans however, to ensure that there are no legal issues/ complications at a later date, the Respondents also applied for approval of building plans under the regular scheme, which were subsequently approved.
- x. It is however pertinent to point out that while the Respondents were granted license bearing no. 58/2010 for setting up a residential plotted colony on land admeasuring 108.068 acres at Village Kherki Majra and Dhankot, Sector 102, 102 A, Tehsil and

District, Gurgaon for which the layout was also approved, subsequently additional license bearing no. 45/2011 was issued by DTCP for setting up plotted colony on land admeasuring 18.606 acres and at the stage of grant of additional license bearing no. 45/ 2011 for Amstoria, layout for the entire colony was also revised vide Drg. No. DTCP-5618 dated 16.09.2016, by DTCP. The revised planning of the entire colony submitted to the DTCP has affected the infrastructure development of the entire colony including 'Amstoria Floors'. The said revision in demarcation was necessary considering the safety of the allottees and to meet the area requirement for community facilities in the area. In view of the said major changes, it is imperative that the said approvals are in place before the floors are offered for possession to the various allottees. Hence, the delay if any, in completing construction of the unit in question and offering possession to the various allottees is due to factors beyond the control of the Respondents.

- xi. The construction of project has been completed and the Occupation certificate for the same has also been received where after, the Respondents have already offered possession to the Complainant vide letter dated 07.10.2019, however despite repeated requests made by the Respondents, the Complainant failed to clear the outstanding dues. The Complainant, being investors do not wish to take possession as the real estate market is down and there are no sales in Secondary market, thus has initiated the present frivolous litigation.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

10. Section 11(4)(a) of the Act 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.

11. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.
12. 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. (Supra) and 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*** 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."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant

F. I. Direct the respondent to refund paid up amount along with interest at the prescribed rate.

14. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 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."

15. The complainant was allotted unit no. D-125 SF, Second floor, admeasuring 1770 sq. ft. (super area) in the project "Amstoria" Sector 102" by the respondent-builder for a sale consideration of Rs. Rs. 64,00,002/- and she had paid a sum of Rs. 28,28,212/- which is approx. 44% of the sale consideration. A buyer's agreement dated 05.05.2013 was executed between parties with regard to the allotted unit and the due date for completion of the project and offer of possession was fixed on 05.05.2015. The Occupation Certificate for the project of the allotted unit is obtained on 15.07.2019. The complainant failed to pay amount due against the allotment unit.
16. As per 7 the terms of the builder buyer agreement the complainant was liable to made the payment as per the payment plan and the relevant clauses of the builder buyer agreement are reproduced under for ready reference:

Termination, Cancellation and Forfeiture: 7.1 The timely payment of each installment of the Total Sale Consideration i.e. Basic Sale Price and other charges as stated herein is the essence of this transaction / agreement. In case payment of any installment as may be specified is delayed, then the Purchaser(s) shall pay interest on the amount due @ 18% p.a. compounded at the time of every succeeding installment or three months, whichever is earlier. However, if the Purchaser(s) neglects, omits, ignores, or fails for any reason whatsoever to pay in time to the Seller any of the installments or other amounts and charges due and payable by the Purchaser(s) within three (3) months from the due date of the outstanding amount or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions on

his/her part herein contained within the time stipulated or agreed to, the Seller/Confirming Party may at its sole option forfeit the amount of Earnest Money and other charges including late payment charges and interest deposited by the Purchasers), and any other amount of a non-refundable nature including Incentive, brokerage charges paid by the Seller/Confirming Party to the broker in case the booking is done through a broker, etc. and in such an event the allotment shall stand cancelled and the Purchaser (S) shall be left with no right, lien or interest on the said Floor and the Seller/Confirming Party shall have the right to sell the said Floor to any other person. Further, the Seller/Confirming Party shall also be entitled to terminate/cancel the allotment of the Purchaser(s) in the event of default of any of the terms and conditions of this Agreement.

17. The respondent issued a final opportunity letter i.e., 04.08.2018 and thereafter, issued a cancellation letter i.e., 05.03.2021 to the complainant. The Occupation Certificate for the project of the allotted unit was granted on 15.07.2019. It is evident from the above mentioned facts that the complainant paid a sum of Rs. 28,28,212/- against sale consideration of Rs. 64,00,002/- of the unit allotted to her on 07.07.2011. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
18. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the

consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

19. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 10.75% (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 cancellation i.e., 05.03.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.


G. Directions of the authority

20. 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 refund the paid-up amount of Rs. 28,28,212/- after deducting 10% of the sale consideration of Rs. 64,00,002/- with interest at the prescribed rate i.e., 10.75% on such balance amount, from the date of cancellation i.e., 05.03.2021 till the actual date of refund.

- ii. A Period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.11.2023


HARERA
GURUGRAM