



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2757 of 2022
Date of filing.:	28.10.2022
First date of hearing.:	14.12.2023
Date of decision.:	06.12.2023

1. Suresh Sharma S/o Laxminarayan Sharma
2. Usha Sharma W/o Suresh Sharma
R/o 14 A, Aastha Apptt. Arjun Nagar,
Safdar Jung Enclave, South West Delhi
110029

....COMPLAINANTS

VERSUS

1. M/s BPTP Limited
28 ECE House, 1st Floor, KC Marg, New Delhi, 110001
2. M/s BPTP Parkland Pride Limited
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

...RESPONDENTS

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: -

Mr. Arjun Kundra, Counsel for the complainant
Mr. Hemant Saini, Counsel for the respondents.

Geeta Rathee

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint 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, Sector 75-89, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	PE-145-FF, admeasuring 1510 sq. ft., First Floor



6.	Date of floor buyer agreement	03.04.2012
7.	Due date of possession	03.04.2014
8.	Possession clause in BBA (Clause 5.1)	<p>Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the seller/ confirming party or any restraints/restrictions from any courts/authorities but subject to the purchasers) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of Total Sale Consideration and other charges and having complied with all provisions, formalities, documentations etc., as prescribed by the Seller Confirming Party whether under this Agreement or otherwise from time to time, the Seller/Confirming Party proposes to offer the handing over the physical possession of Floor to the Purchaser(s) within a period of twenty four (24) months from the date of execution of floor buyer agreement or sanction of building plan, whichever is later. The Purchaser(s) agrees and understands that the Seller/ Confirming Party shall be entitled</p>



		to a grace period of (180) one hundred and eighty days, after the expiry of thirty (24) months, for filing and pursuing the grant of an occupation certificate from the concerned authority with respect to the plot on which the floor is situated. The Seller/Confirming Party shall give a Notice of Possession to the Purchasers with regard to the handing over of possession and the event the purchaser(s) fails to accept and take the possession of the said floor within 30 days thereof, the purchaser(s) shall be deemed to be custodian of the said floor from the date indicated in the notice of possession and the said floor shall remain at the risk and cost of the purchaser(s).
9.	Basic sale consideration	₹ 26,51,295/-
10.	Amount paid by complainant	₹ 27,56,820.50/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainants have booked a unit in the project of the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in the year 2009. Vide allotment letter dated



06.10.2011, complainants were allotted unit no. PE-145-FF, measuring 1510 sq. ft. First Floor, Park Elite Floors, Parklands, Faridabad. A copy of the allotment letter issued by the respondent is annexed as Annexure C-2. A floor buyer agreement was executed between both the parties on 03.04.2012 in respect of the allotted unit. The basic sale price of the unit was fixed at ₹ 27,79,095/- against which the complainants has paid a total amount of ₹ 27,56,820.50/- till date. As per clause 5.1 of the agreement 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 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. After expiry of 24 months from the date of execution of the agreement, the deemed date of possession works out to 03.04.2014. However, respondent failed to offer possession within the time period stipulated in the agreement.

4. It is submitted that the complainants have never defaulted in making payment towards any instalment as per the demand raised by the respondents from time to time. Further, from booking of the unit till date, the respondents have never informed the complainants about any force majeure or any other circumstances which were beyond the reasonable



control of the respondents and has led to delay in completion and development of the project within the time stipulated.

5. The respondents were bound by the provisions and terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects. It is submitted that even after a lapse of more than eight years from the date of delivery of possession, respondents are not in a position to offer possession of the booked unit to the complainants.
6. It is further stated that till date, the respondents have neither provided possession of the flat nor refunded the deposited amount along with interest. On account of inordinate delay in delivery of possession, complainant intends to withdraw from the project on account of deficiency in services. The complainants seek complete refund of the paid amount along with interest as per Rule 16 of HRERA Rules 2017 due to failure on the part of respondent in delivery of possession. Hence the present complaint has been filed.

C. RELIEF SOUGHT

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



- i. Direct the respondent to refund the full amount deposited by the complainant amounting to ₹ 27,56,820.50/- with interest.
 - ii. Any other damages, interest and relief which the Hon'ble Authority may deem fit.
8. During the arguments, learned counsel for the complainants submitted that reiterated his averments as mentioned above and further submitted that complainants wish to withdraw from the project in question and seek refund of the paid amount as per terms of RERA Act 2016 only.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent filed detailed reply on 05.06.2023 pleading therein:
10. That the unit in question was booked by the complainant in the year 2009. On 06.10.2011, respondent duly allotted a unit bearing no. PE-145-FF admeasuring 1510 sq. ft on the first floor to the complainants. That the complainants had opted for a construction linked payment plan. As per the payment plan, respondents had raised various demands, vide demand letters issued from 2009 till 2017, to the complainants. Copy of the demand letters and receipts of the amount paid by the complainants are annexed in the reply. It has been specifically mentioned that the respondent had given a timely payment discount to the complainant.

Complainants have availed a total timely payment discount to the tune of ₹ 1,27,800/-.

11. Respondent has admitted allotment and execution of floor buyer agreement in favour of complainants. It is stated that in terms of floor buyer agreement dated 03.04.2012 respondent proposed to handover the possession of the unit within a period of 24 months from the execution of floor buyer agreement or sanction of building plan, whichever is later along with a grace period of 180 days for filing and grant of occupation certificate.
12. It is further submitted that the construction of the project was going on in full swing but it got affected 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 etc. Further, the construction of the project had been marred by the COVID-19 pandemic whereby the government of India had imposed a nationwide lockdown on 24.04.2020 which was only partially lifted on 31.05.2020. Thereafter, a series of lockdown has been faced by the citizens of India including the complainant and the respondents which continued upto the year 2021. That due to aforesaid unforeseeable

circumstances and reasons beyond the control of the respondents, the construction got delayed.

13. That builder buyer agreement with complainants was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
14. During the course of hearing, Mr. Hemant Saini, learned counsel for the respondents offered refund of the paid amount to the complainants along with interest @ 9%. This offer was categorically denied by the learned counsel for the complainants. Learned counsel for the respondents further submitted that in case complainants wish to withdraw from the project and seek refund of the paid amount, then the interest admissible to the complainants shall only be payable on the actual amount paid by the complainants which shall not be inclusive of the timely payment discount given by the respondents. The total amount received by the respondents in respect of the unit in question is only ₹ 27,11,885.64/-. The timely payment discount offered by the respondents on payments made within the time frame is a genuine act of good will on the part of the respondent and the same should not be considered as a part of total payment made by the complainant. The interest admissible to the complainant should only



be calculated on the actual paid amount excluding the timely payment discount as the same is not actual money which has been utilised by the respondents.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection regarding execution of BBA prior to the coming into force of RERA Act,2016.

One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act,2016. Accordingly, respondent has argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and the same cannot be examined under the provisions of RERA Act. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, has to decide disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per

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agreement for sale, same may be fulfilled by the promoter within
the stipulated time agreed upon between the parties. Issue
regarding opening of agreements executed prior to coming into
force of the RERA Act, 2016 was already dealt in detail by this
Authority in complaint no. 113 of 2018 titled as **Madhu Sareen**
v/s BPTP Ltd decided on 16.07.2018. Relevant part of the order
is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon’ble Supreme court
in **Newtech Promoters and Developers Pvt. Ltd Civil Appeal**
no. 6745-6749 of 2021 it has already been held that the projects
in which completion certificate has not been granted by the
competent Authority, such projects are within the ambit of the



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definition of on-going projects and the provisions of the RERA Act, 2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

E.II Objection raised by the respondent regarding with regard to deemed date of possession .

As per clause 5.1 of the floor buyer agreement dated 03.04.2012 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 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 03.04.2014. 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 that 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. Further, respondent has failed to place on record any document to show/prove as to what was the exact date for sanction of the building plans, thus the date of execution of the builder buyer agreement is taken as the date for calculating the deemed date of possession. 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. It is a matter of fact, that



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 03.04.2014. 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.

E.III Objection raised by the respondent regarding force majeure conditions.

The due date of possession in the present case as per clause 5.1, works out to 03.04.2014, 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

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on the part of the respondent and the various reasons given by
the respondent are NGT order prohibiting construction activity,
cessation 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 2014, and the NGT order referred by the respondent
pertains to the year 2016. It is pertinent to mention that the
respondent has failed to place on record any copy of the orders
of the NGT justifying the applicability of the ban so imposed
upon construction.

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.*

A handwritten signature in blue ink, appearing to read 'S. Taneer', is written over a horizontal blue line.

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vs Vedanta Ltd & Anr. bearing OMP (1) (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.

15. As has been admitted between both the parties, upon booking, a unit bearing no. PE-145-FF, First Floor, admeasuring 1510 sq. ft had been allotted to complainants in the project of the respondent namely “Park

Elite Floors, Parklands” situated at Sector 80, Faridabad, Haryana vide allotment letter dated 06.10.2011. As per floor buyer agreement dated 03.04.2012, possession of the unit should have been delivered by 03.04.2014. However, even after a lapse of more than nine years respondent is not in position to deliver possession of the booked unit to the complainants. On account of inordinate delay in delivery of possession, complainants wish to withdraw from the project and seek refund of the paid amount along with interest.

16. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond a reasonable period of time thus causing delay and suffering to the complainants. Respondent has neither developed the project in question nor returned the amount paid by the complainants till date. Fact remains that respondent in its written statement has not specified as to when possession of booked unit will be offered to the complainants. Complainants have already waited for a long period of time and are not willing to wait further. In these circumstances, the provisions of Section 18(1)(a) of the Act clearly come into play by virtue of which the complainants are seeking refund of paid amount along with interest on account of default in delivery of possession of booked unit within a reasonable period of time.



17. 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 amount 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."

18. So, the Authority finds it to be a fit case for allowing refund in favour of complainants. The complainants will be entitled to refund of the paid amount from the dates of various payments till realisation. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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;

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".."

19. 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. 06.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
20. Hence, Authority directs respondent to pay refund to the complainants on account of failure in timely delivery of possession 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 10.75% (8.75% + 2.00%) from from the date of various payments till actual realisation of the amount.
21. 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 06.12.2023 at the rate of 10.75% and said amount works out to



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₹33,29,159/- Complainants shall be entitled to further interest on the paid amount till realisation beginning from 07.12.2023 at the rate of 10.75%:

Sr. No.	Principal Amount (in ₹)	Date of payment	Interest Accrued till 06.12.2023 (in ₹)
1.	3,00,000/-	17.06.2009	4,67,051/-
2.	5,83,171/-	23.12.2009	8,75,440/-
3.	1,19,424/-	24.10.2011	1,55,710/-
4.	3,35,606/-	04.02.2012	4,27,397/-
5.	3,45,792/-	23.01.2013	4,04,211/-
6.	3,36,912/-	26.02.2013	4,21,859/-
7.	3,37,411/-	29.03.2013	3,88,057/-
8.	24,799	25.11.2016	18,756/-
9.	49,848/-	05.09.2017	33,532/-
10.	2,50,000/-	05.09.2017	1,68,171/-
11.	2012.64/-	30.08.2022	275/-
Total:	26,84,885.64/-		33,29,159/-

22. It is pertinent to mention that complainants have claimed to have paid an amount of ₹ 27,56,820.50/- to the respondent in lieu of booked unit. Said amount has also been admitted by the respondent vide statement of accounts dated 30.08.2022 annexed as Annexure C4. However, out of said amount, complainants have actually only paid an amount of ₹26,84,885.64/- to the respondent and have received an amount of ₹ 44,934.86/- as timely payment discount. Timely payment



discount is a discount given by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. This amount is made a part of the payment made towards sale consideration of the booked unit. This amount is never actually paid by the allottee nor received by the respondent. It is just an added benefit towards the booked unit. Captioned complaint pertains to refund of the paid and the complainants are not continuing with the project, therefore, this amount cannot be entertained as payment made towards sale consideration. The actual amount paid by the complainants and received by the respondent is ₹ 26,84,885.64/- only. Therefore, the total paid amount for the purpose of refund and calculation of interest is being taken as ₹ 26,84,885.64/- only. It is further pertinent to mention that the complainants have annexed receipt only for an amount of ₹ 27,09,873/-. For the remaining amount of ₹ 2,012.64/- the date of receipt is being taken as 30.08.2022 i.e the date statement of account by which this amount has been admitted by the respondent .

F. DIRECTIONS OF THE AUTHORITY

23. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation



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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 ₹60,14,044.64/- (till date of order i.e 06.12.2023) to the complainants and pay further interest beginning from 07.12.2023 till actual realisation of the amount at the rate of 10.75%.

(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.

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


.....
NADIM AKHTAR
[MEMBER]


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