



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	835 of 2022
Date of filing.:	18.05.2022
First date of hearing.:	21.07.2022
Date of decision.:	05.10.2023

1. Amit Bhatia S/o Late Sh. Mohan Lal BhatiaCOMPLAINANTS
2. Seema Bhatia W/o Sh. Amit Bhatia
Both R/o House no. DG/1285, New Colony Extension Rasulpur
Road, Near Post Office, Palwal-121102

VERSUS

BPTP LimitedRESPONDENT
M-11, Middle Circle, Connaught
Circus, New Delhi- 110001

CORAM: Dr. Geeta Rathee Singh Member

Nadim Akhtar Member

Present: - Mr. Rajan Hans, Counsel for the complainants
through VC

Mr. Hemant Saini, Counsel for the respondent.

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 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, Parklands, sector-80, Faridabad
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	B-904, 9th floor, super area 1120 sq. ft.
6.	Date of floor buyer agreement	08.07.2013



7.	Due date of possession	08.07.2016
8.	Possession clause in BBA (Clause 3.1)	<p>Subject to Force Majeure, as defined in Clause 10 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) n being in default under any part of this Agreement including but not limited to the timely payment of each arr every instalment of the total sale consideration including DC, Stamp duty and other charges and also suber: to the Purchaser(s) having complied with all formalities or documentation as prescribed by s Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the sar unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan c execution of Flat 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</p>



		Occupation Certificate etc. from DTCP under the Act in respect of the project "Discovery"
9.	Basic sale consideration	₹ 29,84,800/-
10.	Amount paid by complainant	₹ 37,50,100/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that a unit had been booked in the project of the respondent namely "Discovery Park, Parklands" situated at Faridabad, Haryana by the complainants in the year 2011, by paying a booking amount of ₹ 2,19,290/-. Vide allotment letter dated 19.11.2011, complainants were allotted unit no. B-904, measuring 1120 sq. ft. Discovery Park, Parklands, Faridabad. A copy of the allotment letter issued by the respondent is annexed as Annexure P-1 of the complaint file. A flat buyer agreement qua the said unit was executed between both the parties on 08.07.2013. A copy of the floor buyer agreement issued by the respondent is annexed as Annexure P-2 of the complaint file. As per clause 3.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date of sanction of the building plan or execution of the flat buyer's agreement, whichever is later. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation



certificate from the competent Authority. As per 36 months from the date of execution of the agreement, the deemed date of possession works out to 08.07.2016. The basic sale price of the unit was fixed at ₹ 29,84,800/- against which the complainant has paid a total amount of ₹ 37,50,100/- till date. That even after a lapse of more than 6 years from the deemed date of possession, respondent is not in a position to offer possession of the unit to the complainant. The construction of the project is still incomplete and will take more than 2 years to get fully finalised. Latest photographs of the unit as on 07.01.2022 have been annexed as Annexure P-4, clearly show that the building is still under construction. Despite many follow-ups with the respondent regarding the possession of the said unit, complainants did not receive a satisfactory reply from the respondent.

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. Complainants have invested their hard-earned money in the project of the respondent but complainants are suffering due to delay on the part of respondent in delivery of possession.
5. The respondent was bound by the provisions and terms and conditions of the agreement and deliver possession of the unit within time prescribed in the flat buyers agreement. However, the respondent has miserably

failed to complete the project and offer legal possession of the booked unit complete in all aspects.

6. It is further stated that till date, the respondent has neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

7. That the complainant seeks following relief and directions to the respondent:-
- i. Pass an appropriate award directing the respondent to provide the possession of the unit at the earliest or else provide the alternate unit
 - ii. Pass an appropriate order directing the respondent to provide delayed possession charges from the due date of possession i.e, 08.07.2016 till the actual valid and legal possession.
 - iii. Pass any other relief/direction which the applicant is entitled for under the Real Estate (Regulation & Development) Act,2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.
8. During the course of hearing, learned counsel for complainants submitted that as per the information available with his clients, the unit of

the complainants has not received occupation certificate. The complainants are willing to stay with the project and wait for grant of occupation certificate. Complainants will accept possession of the unit after receipt of occupation certificate from the concerned department along with delay interest for delay caused in offering possession.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

9. Learned counsel for the respondent filed detailed reply on 17.03.2023 pleading therein:

(i) It is submitted that the unit in question was booked by the complainants on 31.10.2011. On 19.11.2011, respondent duly allotted a unit bearing no. B-904, 9th floor, tentatively measuring 1,120 sq. ft. to the complainants. A flat buyer agreement qua the said unit was executed between both the parties on 08.07.2013. As per clause 3.1 of the agreement, possession of the unit was to be delivered within a period of 36 months from the date of sanction of the building plan or execution of the flat buyer's agreement, whichever is later, in addition to the further grace period of 180 days. Since the building plan was approved on 27.06.2012 and the flat buyer agreement was executed on 08.07.2013, therefore, the due date of possession subject to force majeure arrives out to be 08.01.2017, i.e, 36 months from the date execution of the flat buyer's agreement inclusive of the grace period. As per the payment plan,



respondents had raised various demands, vide demand letters issued from 2011 till 2018, to the complainants. Copy of the demand letters and receipts of the amount paid by the complainants have been annexed with the reply. It has been specifically mentioned that the respondent had given a timely payment discount to the complainants. Complainants have availed a total timely payment discount to the tune of ₹ 1,34,316/-.

(ii) Respondent has admitted allotment and execution of floor buyer agreement in favour of complainant.

(iii) That builder buyer agreement with complainant 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.

(iv) It is pertinent to mention that the possession timelines of the unit had been diluted due to occurrence of force majeure circumstances which are beyond the control of the respondent. 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 respondent which continued upto the year 2021. That due to aforesaid unforeseeable circumstances and reasons beyond the control of the respondent, the construction got delayed.

10. During the course of hearing, learned counsel for the respondent submitted that the respondent is not in a position to issue a valid offer of possession as the unit in question is yet to receive occupation certificate. He submitted that respondent company is ready to offer refund of the paid amount along with interest to the complainants, which was outrightly denied by the learned counsel for the complainants. He further submitted that, if the complainants are willing to wait for the occupation certificate, then the respondent will issue an offer of possession to the complainants after receipt of the same. He further argued that the timely payment discount offered by the respondent 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 complainants. The delay interest admissible to the complainants 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 respondent.

E. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

Findings on the objections raised by the respondent.

E.I Objection regarding execution of FBA 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, however, is deciding 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 ensures that whatever were the obligations of the promoter as per agreement for sale, the 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 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 flat buyer agreement is admitted by the respondent. Said flat 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 complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

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

As per clause 3.1 of the flat buyer agreement dated 08.07.2013 possession of the unit was to be delivered within a period of thirty six (36) months from the date of execution of flat 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 36 months for filing and pursuing the grant of occupation certificate from the competent Authority. 36



months from the date of execution of the agreement, the deemed date of possession works out to 08.07.2016. 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 flat 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 of possession. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 36 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 36 months. Thus, the period of 36 months expired on 08.07.2016. 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 3.1 is 08.07.2016, 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 36 months from builder buyer agreement was not fulfilled by respondent. There is delay on the part of the respondent and the various reasons given by the respondent are NGT order prohibiting construction activity, ceasement of construction activities during the COVID-19 period and delay in payments by many customers leading to cash crunch.

Herein all the pleas/grounds taken by the respondent to plead the force majeure condition happened after the deemed date of possession. The various reasons given by the respondent such as the NGT order, Covid outbreak etc. are not convincing enough as the due date of possession was in the

year 2016, therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals/directions. As far as delay in construction due to outbreak of Covid-19 is concerned Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd & Anr. bearing OMP (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 as 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 made by various allottees to establish the fact. 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.

E.IV Objection raised by the respondent regarding consideration of timely payment discount at the time of calculation of interest.

Complainants in this case had booked a unit in the project of the respondent in the year 2011 for a basic sale consideration of ₹ 29,84,800/- against which the complainant have claimed to have paid an amount of ₹ 37,50,100/-. It is submitted by the respondent that out of said amount, complainant has actually paid an amount of ₹ 36,15,784/- and has received a credit of ₹ 1,34,316 /- from the respondent as timely payment discount for making scheduled payments on time. This facility has been provided by the respondent to the allottees who make requisite payments on time and receive benefit of the same towards the sale consideration. Now it is the contention of the respondent that timely payment discount offered by the respondent on payments made within the time may not be considered as part of the actual payment for the purpose of calculation of interest admissible to the allottees.

Whereas, it has been argued by the learned counsel for the complainant that the amount in respect of the timely payment discount has been credited towards the total payment made for the booked unit as a policy by the respondent company. Even in the receipts it has been made part of the total payment made therefore, it should be considered as part of the total payment made towards the unit and complainant should be allowed interest over the same.

The main point of contention between both the parties is with regards to admissibility of interest to the complainant for the amount credited as timely payment discount. Upon bare perusal of the various demand letters issued by the respondent placed on various pages of the reply, annexed from 75 to 106, it is observed that vide said demand letters respondent has time and again raised demand from the complainant towards payment of balance sale consideration. In said demand letters it has been specifically mentioned by the respondent builder that complainant will receive a timely payment discount if a payment is made within the time frame mentioned in the demand letter. From these documents placed on record, it can



be deduced that the respondent company used the payment method of timely payment discount as a company policy to ensure payment from the allottees within the requisite time frame. As a benefit, the said discount was credited towards the total sale consideration made by the complainant and was an essential component in determining the balance payable amount. Perusing the receipts and demand letters, it cannot be denied that these payments form a part of the total amount paid by the complainant. Although it is true that this discount is an act of good will on the part of the respondent but complainants cannot be denied their rights especially when the respondent company itself considers this as a paid amount as per payment policy. Therefore, the complainant cannot be denied of claiming interest on the total amount paid in respect of the booked unit including the component of timely payment discount. Accordingly, the delay interest for delay caused in handing over of possession shall be provided on the entire amount for which the receipts have been issued by the respondent.

11. Admittedly, vide allotment letter dated 19.11.2011 complainants were allotted unit no. B-904, measuring 1120 sq. ft. Discovery Park, Parklands, Faridabad. A flat buyer agreement was executed between both the parties with respect to the allotted unit on 08.07.2013.


J. Rathee

12. As per clause 3.1 of the agreement and the observations as recorded in subheading 'E-II' of this order, possession of the unit should have been delivered by 08.09.2016. Delivery of possession of the unit has been delayed by the respondent by more than 7 years from the deemed date of possession as per the agreement entered between the parties. Learned counsel for respondent orally submitted during hearing proceedings that the respondent company is yet to receive occupation certificate in respect of the unit of the complainant. Complainants are willing to wait for possession of the unit till the receipt of occupation certificate and are further claiming delay interest for the delay caused in delivery of possession.
13. The facts set out in the preceding paragraph demonstrate that construction of the project had been delayed beyond the time period stipulated in the buyer's agreement. The Authority observes that the respondent has failed to fulfil its obligation stipulated in FBA dated 08.07.2013. Possession of the unit should have been delivered by 08.07.2016. Now, even at present, respondent is not in a position to offer possession of the unit since the respondent company has yet to receive occupation certificate. Fact remains that respondent in his written statement has not specified as to when possession of booked unit will be offered to the complainant. Complainants, however, do not wish to withdraw from the project and are rather interested in getting the



possession of their unit. Learned counsel for the complainants has clearly stated that complainants are ready to wait for possession of unit after completion of construction and receipt of occupation certificate. In the circumstances, the provisions of Section 18 of the Act clearly comes into play by virtue of which while exercising the option of taking possession of the unit, the allottee can also demand, and the respondent is liable to pay, interest for the entire period of delay caused at the rates prescribed. The respondent in this case has not made any offer of possession to the complainants till date. So, the Authority hereby concludes that the complainants are entitled for the delay interest from the deemed date i.e, 08.07.2016 up to the date on which a valid offer is sent to them after receipt of occupation certificate. 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”..”

14. 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. 05.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

15. Hence, Authority directs respondent to pay delay interest to the complainant for delay caused in 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 due date of possession i.e 08.07.2016 till the date of a valid offer of possession.

16. Authority has got calculated the interest on total paid amount from due date of possession i.e 08.07.2016 till the date of this order i.e 05.10.2023 which works out to ₹ 26,26,318/-and further monthly of ₹ 33,134/- as per detail given in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till 05.07.2023 (in ₹)
1.	16,15,597/-	08.07.2016	12,59,037/-
2.	12,094/-	09.12.2016	8,876/-
3.	4,61,100/-	29.12.2016	3,35,706/-
4.	4,31,403.16/-	26.05.2017	2,95,281/-
5.	4,77,603/-	05.10.2017	3,08,335/-
6.	3,19,253.72/-	09.11.2017	2,02,816/-
7.	3,03,292/-	02.02.2018	1,85,083/-
8.	1,29,757.12/-	12.07.2021	31,184/-
Total:	37,50,100/-		26,26,318/-
Monthly interest:	37,50,100/-		33,134/-

Rattree

17. It is pertinent to mention that complainant has claimed to have paid an amount of ₹ 37,50,100/-, which has also been admitted by the respondent vide statement of accounts dated 12.07.2021 placed at page 61 of complaint filed. However, complainant has only attached receipts for an amount of ₹ 36,20,342.88/-. For the remaining amount of ₹ 1,29,757.12/-, the date of 12.07.2021, vide which the respondent has admitted to having received the said payment has been taken for the purpose of calculating the admissible interest.

F. DIRECTIONS OF THE AUTHORITY

18. 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 pay upfront delay interest of ₹ 26,26,318/- (till date of order i.e 05.10.2023) to the complainants towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹33,134/- till the offer of possession after receipt of occupation certificate.



(ii) Complainants will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.

(iii) 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 to the allottees.

(iv) The respondent shall not charge anything from the complainants which is not part of the agreement to sell.

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


.....
NADIM AKHTAR
[MEMBER]


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