



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	442 of 2022
Date of filing:	14.03. 2022
Date of first hearing:	10.05.2022
Date of decision:	02.11.2023

Rajendra Rawat, S/o Sh. Dhan Singh Rawat,
R/o 1633, Near NIMS Hospital, Sector-23A,
Faridabad, Haryana-121005

.... COMPLAINANT

VERSUS

1. Designer Realtors Private Limited, having its office at Plot No. 2B, Sector 94, Noida, Gautam Buddha Nagar, UP - 201301.
2. M/s BPTP Ltd., through its Managing Director, having its office at M-11, Middle Circle, Connaught Place, New Delhi - 110001.

...RESPONDENTS

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

Present: Mr.Nitin Kant Setia, learned counsel for the complainant
 through video conference.

Mr. Hemant Saini, learned counsel for the respondents.

Lead

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint was filed on 14.03.2022 by the complainant under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as '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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETIALS

2. The particulars of the unit booked by the complainant, the details of the sale consideration, the amount paid by the complainant and the details of the project are detailed in the following table:

Sr. No.	Particulars	Details
1.	Name of the project	BPTP District 5 Block B Sector-84, Faridabad.
2.	RERA Registered/not registered	Registered (HRERA-PKL-FBD-152-2019)
3.	Date of allotment	25.12.2019
4.	Plot no.	B-101



5.	Area	118.310 sq. yd. (98.921sq. mt.)
6.	Date of plot buyer agreement (PBA)	22.06.2021
7.	Deemed date of possession	30.06.2024 <i>As per clause 10.1 of PBA: The Promoter agrees and understands that timely delivery of possession of the Plot to the Allottee is the essence of the Agreement. The Promoter assures to hand over possession of the Plot on or before 30.06.2024 unless there is delay or failure due to 'force majeure', court orders, Government policy/guidelines, decisions affecting the regular development of the Project. If, the completion of the Project is delayed due to the above mentioned conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Plot. However, the Promoter shall endeavor to deliver the possession of the Plot on or before 31.10.2021. It is hereby expressly clarified that the penalty provisions under RERA shall only be applicable if the Promoter fails to give possession on or before 30.06.2024.</i>
7.	Total sale consideration	Rs.48,88,372/-.
8.	Amount paid by the complainants	Rs.41,46,213/-
9.	Termination letter	03.07.2021
10.	Offer of possession	No offer was given



B. FACTS OF THE CASE AS STATED IN THE COMPLAINT

3. Case of the complaint is that the respondents had launched their project in the name and style of "BPTP District 5 Block B" in Sector- 84, Faridabad, Haryana.
4. That on being attracted by the advertisement and marketing of the project by the respondents, the complainant booked a plot in the said project of respondents and complainant was allotted a plot bearing no. B-101 vide allotment letter dated 25.12.2019. A copy of the allotment letter is annexed as Annexure C-1.
5. That the respondents without executing plot buyer agreement started demanding money and continued to do so until a substantial amount was received by it and the complainant was put in a position of no return. A copy of demand letters and receipts of payments is annexed as Annexure C-2 (Colly).
6. That as per the statement of account dated 23.07.2021, complainant had made a total payment of Rs.19,40,284/- remaining the balance amount of Rs.22,05,929/-. A copy of the Statement of account dated 23.07.2021 is annexed as Annexure C-3.



7. That for purpose of paying the amount of Rs.22,05,929/-, complainant had applied for a Housing Loan with 'HDFC Home Loans' and the same was intimated to the respondents. Loan was sanctioned by HDFC vide letter dated 23.04.2021 subject to legal and technical clearance. A copy of the sanction letter dated 23.04.2021 is annexed as Annexure C-4.
8. That the complainant asked the respondents to provide documents such as permission to mortgage and NOC which are necessary for the clearance of housing loan formalities. However, respondents did not provide the required documents in time which were necessary for availing the clearance of loan formalities and this caused delay in clearance of loan formalities. A copy of the email conversation between the complainant and respondents showing requests made by complainant to the respondents is annexed as **Annexure C-5**.
9. That the plot buyer agreement was signed between the complainant and the respondents on 22.06.2021. Copy of the plot buyer agreement dated 22.06.2021 is annexed as Annexure C-6. As per the terms of the agreement, the total sale consideration of the flat was Rs.48,88,372/-.
10. That to the utter shock of the complainant, the respondents sent a termination letter dated 03.07.2021 in respect of the allotted unit even though the complainant had already paid Rs.19,40,284/- which is more



than one third of the total consideration. A copy of the termination letter dated 03.07.2021 is annexed as Annexure C-7.

11. That the respondents after a delay of 6 months, provided the permission to mortgage vide letter dated 21.07.2021 after which the complainant was able to proceed further with the procedure of availing Housing Loan and a quadripartite agreement dated 23.07.2021 was executed in respect of the allotted unit. A copy of the letter of NOC and permission to mortgage dated 21.07.2021 is annexed as Annexure C-8 and copy of the quadripartite agreement is annexed as Annexure C-9.

12. That on 24.08.2021, an amount of Rs. 22,05,930/- was disbursed in favour of the respondents by the HDFC in respect of the allotted unit and the complainant informed the respondents regarding successful payment of the amount of Rs. 22,05,930/- through emails and asked for the receipt of the same. Complainant also asked for next demand letter from the respondents so that the remaining amount can also be paid in a timely manner. A copy of the email dated 30.10.2021 is annexed as Annexure C-10.

13. However the respondents informed the complainant vide email dated 05.07.2021 that booking for plot no. B101 has been cancelled after obtaining complainant's consent which is false as the consent was never



given by the complainant or by anyone on his behalf. A copy of the email dated 05.07.2021 is annexed as Annexure C-11.

14. That though the respondents had already sent the termination letter on 03.07.2021, which is illegal, the respondents still executed the quadripartite agreement (Annexure C-9) and also accepted the amount which was paid after the illegal termination. That the respondents on one hand illegally terminated the booking of the unit and at the same time retained the complete amount paid by the complainant towards the allotted unit. This shows dishonest conduct of the respondents.

15. That it is most important to point out that the termination of the allotment was illegal in the first place for two reasons:

- a) Firstly, the consent of the complainant was never obtained which the respondents falsely stated in its email dated 05.07.2021 (Annexure C-11).
- b) Secondly, the complainant had already paid Rs. 19,40,284/- and for the amount of Rs. 22,05,929/-, the complainant had applied for a housing loan from HDFC which was sanctioned, but the amount could not be disbursed in time because the respondents caused delay of 4 months in providing the documents which are necessary for clearance of housing loan. Therefore, delay in payment, if any,



is attributable to the respondents and for default of the respondents, complainant cannot be made to suffer. It's a classic case of pot calling the kettle black.

16. That clause 25 of the buyers agreement provides for the cancellation of allotment at the instance of promoter due to 'force majeure', court order, etc. after refunding entire amount (after deducting brokerage charges and interest for delayed payment). However, in the present case, respondents cancelled the allotment for no such reason as mentioned in clause 25 and neither did it refund any amount making the termination illegal.
17. That the respondents have illegally terminated the booking of the allotted unit of the complainant for no fault of the complainant, therefore the booking of the allotted unit must be restored to the complainant and the possession of the unit be handed over to the complainant. Hence the complaint.

C. RELIEF SOUGHT

18. The complainant in his complaint has sought following reliefs:
 - i) The termination dated 03.07.2021 (Annexure C-7) be quashed and declared as null and void and not effecting the rights of the complainant against the residential unit and the respondents be directed to restore the booking of the allotted unit to the complainant.



- ii) During the pendency of the present complaint the illegal termination of the allotted unit may kindly be stayed and respondents be directed not to alienate the allotted unit.
- iii) The respondents be directed to hand over the possession of the unit allotted to the complainant;
- iv) The respondents be restrained from charging any interest from the complainant in view of the fact that the complainant had not delayed the payments against the unit in question and it was the fault of the respondents which has caused delay in sanction of the loan to the complainant against the unit in question;
- v) Direct the respondents to pay compensation to the tune of Rs. 5,00,000/- on account of mental agony and harassment.
- vi) Direct the respondents to pay compensation to the tune of Rs 75,000/- on account of legal charges.
- vii) Any other relief which the Applicants are entitled for under the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation & Development) Rules, 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

19.Learned counsel for the respondent filed a detailed reply on 09.08.2023 wherein it is pleaded as under:-



- 1) That the complainant approached the respondents for allotment of a residential plot in the project of the respondents, namely, 'BPTP District 5 Block B' at Sector-84, Faridabad, Haryana. Accordingly, complainant booked a residential plot in the said project of the respondent and had allotted an independent residential plot No.B-101 measuring 118.31 sq. yd. vide allotment letter dated 25.12.2019. Copy of the said allotment letter is annexed as Annexure-R/1.
- 2) That as per the payment plan, respondent no.1 raised a demand vide payment request letter dated 26.12.2019, with respect to the booking of the said plot. The complainant paid the said demand vide receipt dated 31.12.2019, to respondent no.1 which is annexed as Annexure-R/2.
- 3) That as per the payment plan, respondent no.1 raised a demand vide payment request letter dated 07.01.2020, on achievement of landmark of "within 5 days of draw results / allotment, whichever is earlier". Copy of the payment request dated 07.01.2020 is annexed as Annexure-R/3.
- 4) That as per the payment plan, respondent no.1 raised a demand vide payment request letter dated 10.02.2020, on achievement of



landmark of "on or before 25.02.2020", payable by 25.02.2020.

The complainant paid the said demand vide receipt dated 03.03.2020. Copies of the Payment Request Letter dated 10.02.2020 and 03.03.2020, are annexed as Annexure-R/4 (Colly.).

- 5) That as per the payment plan, the respondent no.1 raised a demand, vide payment request letter dated 14.05.2020, on achievement of landmark of "on or before 25.05.2020 or upon commencement of earth work (whichever is later)", payable by 29.05.2020. Copy of the payment request letter dated 14.05.2020, is annexed as Annexure-R/5 (Colly.).
- 6) That the respondent no.1 had sent a Reminder Notice-I dated 14.07.2020 to the complainant thereby asking him to clear the outstanding consideration. Copy of the reminder notice dated 14.07.2020, is annexed as Annexure-R/6.
- 7) That the complainant had paid the amount, as per demand raised on 14.05.2020 vide receipts dated 30.07.2020 and 28.08.2020 annexed as Annexure-R/7 (Colly.).
- 8) As per the payment plan, the respondent no. 1 raised a demand vide payment request letter dated 07.09.2020. However, the



complainant did not pay the said demand till the filing of this reply.

- 9) As per the payment plan, the respondent no.1 raised a demand vide payment request letter dated 23.03.2021, on achievement of landmark of "on or before 25.10.2020 or upon commencement of laying of water lines (whichever is later)", payable on or before 22.04.2021. However, the complainant did not pay the said demand till the filing of the instant reply. Copy of the payment request letter dated 23.03.2021, is annexed as Annexure-R/8.
- 10) As per the payment plan, the respondent no.1 raised a demand vide payment request letter dated 11.05.2021, on achievement of landmark of "on or before 25.12.2020 or upon commencement of road work (whichever is later)", payable on or before 26.05.2021. However, the complainant did not pay the said demand till the filing of the instant Reply. Copy of the payment request letter dated 11.05.2021, is annexed as Annexure-R/9.
- 11) That the respondent no.1 had entered into an agreement for sell dated 22.06.2021 with the complainant with respect to the allotted plot. According to clause 24.2.2(a) of the agreement, in case of the default committed by the allottee, respondent no.1 is entitled to



cancel allotment of the said plot after making deductions in amounts paid by the allottee to the respondent no.1. Copy of the agreement dated 22.06.2021 is annexed as Annexure- R/10.

- 12) That the respondent no.1 had terminated the allotment of said plot vide termination letter dated 03.07.2021. Copy of termination letter dated 03.07.2021 is annexed as Annexure-R/11.
- 13) That the complainant entered into a quadripartite agreement, dated 23.07.2021 with the respondents and Housing Development Finance Corporation Limited (HDFC limited) whereby, the complainant had availed a loan from HDFC limited for purchase of the said plot from the respondent no.1. Copy of the quadripartite agreement dated 23.07.2021 is annexed as Annexure-R/12.
- 14) That respondent no.2 had terminated the allotment of said plot vide termination/cancellation letter dated 09.01.2023. It is pertinent to mention that 120 days had already been passed since issuance of the termination letter dated 03.07.2021, hence, the respondent no.2 terminated the allotment of said plot, as per the agreement to sell. Copy of the termination letter dated 09.01.2023, is annexed as Annexure-R/13.



E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

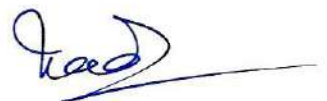
20. During oral arguments, learned counsel for the complainant and respondents reiterated the arguments as were submitted in writing. Ld. counsel for the complainant has insisted upon the relief that the termination dated 03.07.2021 be quashed and declared as null and void, not affecting the rights of the complainant against the residential unit and the respondent be directed to restore the booking of the allotted unit to the complainant. On the contrary, ld. counsel for the respondent stated that complainant has failed to make payments within the time stipulated in the demand letter issued by the respondent, failing which his allotment was cancelled/terminated vide termination letter dated 03.07.2021. However, respondent in its good gesture has executed quadripartite agreement dated 23.07.2021, but complainant chose to dishonour the payments requests raised by respondent on 23.03.2021 and 11.05.2021, which clearly shows complainant was not ready and willing to perform agreement to sale dated 22.06.2021. Ultimately, respondent was constrained to terminate the allotment vide termination letter dated 09.01.2023, hence, the termination be upheld. Thus, ld. counsel for the respondent insisted that said termination be upheld and he is ready to



refund the entire amount deposited by the complainant along with interest without claiming any deduction. He admitted the disbursement of loan amount of Rs. 22,05,930/- by the bank to the respondent through UTR No. N236211610621912 as mentioned at Page 82 of complaint file. He also stated that respondent had applied for grant of Part Completion Certificate on 04.08.2021. He stated that non-payment by complainant within time stipulated in the demand letter is the reason for termination of the unit of the complainant-allottee.

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

21. Authority has heard the arguments of both the parties and has perused the documents available on record. After going through the submissions made by both the parties, Authority observes that there is no dispute between the parties with regard to the facts that the complainant had booked a plot in the project of respondents namely; 'BPTP District 5 Block B' situated at Sector-84, Faridabad, Haryana. Thereafter, the said plot bearing No. B-101 measuring 118.31 sq. yd. was allotted to the complainant vide allotment letter dated 25.12.2019. Plot Buyer agreement was executed between both the parties on 22.06.2021. Total cost of the plot was Rs.48,88,372/- against which complainant has paid Rs.41,46,213/- till date which is more than 80% of the sale consideration.



The payment of Rs. 19,40,284/- was made by the complainant before receiving the illegal termination letter dated 03.07.2021 and remaining amount of Rs.22,05,929/- was paid by complaint by way of loan after receiving the termination letter with respect to plot in question. The said payment of Rs.22,05,929/- was also accepted by the respondent even after alleged termination of plot in question. The total payment of Rs.41,46,213/- made by complainant has also been admitted by respondent during the course of hearing.

22. Now, the fact that emerges for consideration of Authority is that after the allotment of the unit on 25.12.2019, the respondent raised demands in accordance with the terms agreed between the parties. The complainant paid the demanded amount and a total of Rs. 19,40,284/- was paid till execution of plot buyer's agreement on 22.06.2021. During the course of the transaction the complainant applied for a housing loan from HDFC bank and the loan came to be sanctioned by the bank on 23.04.2021. For the purpose of disbursement the bank required the complainant to submit an NOC and permission to mortgage from the respondent and also enter into a quadripartite agreement between the bank, complainant and respondent. The emails attached with the complaint reveal that the complainant had approached the respondent several times but he was made to run from



one office to another and meet one executive or another for the purpose of issuing said documents (Annexure C-5). On one hand the respondent was raising demands and issuing payment reminders to the complainant and on the other hand was delaying the issuance of NOC and permission to mortgage for further submission to the bank in order to facilitate the disbursement of the loan amount to it. The necessary documents were supplied by the respondent on 21.07.2021. The complainant submitted the said documents with the bank and an amount of Rs. 22,05,930/- was disbursed to the respondent by the bank on 21.08.2021. A total amount of Rs. 41,46,213/- out of the total sale consideration of Rs. 48,88,372/- stands paid by the allottee.

23. The chain of events shows an ordinary transaction of sale of plot by a builder to an allottee without there being any breach or default by the allottee. The next lawful and logical step was handing over of the possession by the respondent and payment of remaining amount by the complainant. However, during this period, the respondent issued a termination letter dated 03.07.2021 to the allottee and cancelled the allotment of the complainant.

24. Now the issue which arised before this Authority for adjudication is that whether the termination of the unit by respondent is legal or not.



25. In this regard, after hearing both parties and on perusal of documents on record Authority observes that there is no willful delay on the part of the complainant in making the payments to the respondent. The sanction of the loan and payment of an amount of Rs. 19,40,284/- before execution of the plot buyer's agreement establish the *bona fide* of the allottee. The time taken between sanction of loan and disbursement is mere four months. The disbursement was dependent on issuance of NOC and permission to mortgage by the respondents. After issuance of such documents the loan was disbursed within a period of 30 days by the bank. The time between 23.04.2021 (sanction of loan) and 21.08.2021 (disbursement of loan) is not inordinate so as to constitute a default on the part of the complainant entitling the respondent to terminate the agreement.

Even if it is assumed that there is delay on the part of the complainant in paying the outstanding demands the same is firstly not inordinate and secondly, attributable to the respondent as it had not issued the permission to mortgage in time and immediately on its issuance the complainant took necessary steps to get the disbursement made in favour of the respondents. Under Clause 18 of the plot buyer's agreement it was the duty of the promoter to facilitate the loan process and issuance of NOC and permission to mortgage would mean



facilitating the loan process as without issuance of such documents by the respondent no disbursement could take place.

26. Further, on perusal of clause 7.2 of the plot buyer's agreement, Authority observes that in the event of cancellation of allotment, the builder is obligated to refund the remaining amount after deduction of the booking amount. The respondent had not refunded any amount to the bank or the complainant and has been holding and utilizing Rs. 41,46,213/- paid by the complainant, meaning thereby the termination is not in accordance with the plot buyer's agreement.

27. Even after issuance of termination letter on 03.07.2021, respondent had entered into a quadripartite agreement on 23.07.2021 for facilitation of loan taken by the complainant. The respondent had also issued an NOC and permission to mortgage on 21.07.2021 and had received 22,05,930/- from the complainant. All these acts of respondents after issuance of termination letter clearly depict its intention to proceed with the allotment process and thus, respondent had waived the alleged breach by the complainant and moved ahead with the transaction of allotment and delivery of the plot in question. The plot buyer's agreement under clause 30 recognizes builder's option of waiver of breach by the allottee in not making payments as per agreed plan. Therefore, on account of



subsequent affirmative acts of the respondents the termination letter dated 03.07.2021 becomes inconsequential and does not affect the rights of the complainant in claiming possession of the booked plot.

28. Furthermore, during the pendency of the present complaint there is a second termination letter issued by the respondent on 09.01.2023. No valid explanation has been given by the respondent for issuance of second termination letter and how would that be maintainable after the unit has already been terminated on 03.07.2021. Even otherwise, after hoarding huge amount of money which constitutes almost 80% of the total sale consideration of the plot and without any further demand being raised to the complainant there was no fresh default by the complainant therefore, the second termination is unwarranted and without any sufficient cause and is thus, illegal.

29. For foregoing reasons, termination letters dated 03.07.2021 and 09.01.2023 vide which allotment of the plot of complainant has been terminated, is hereby quashed being unlawful and arbitrary. Seriousness of the complainant for purchasing the plot is adequately proved because he has already made substantial payment and ready to pay balance consideration. It is observed that as per clause 10.1 of agreement, the possession of the unit in question was to be handed over on or before



30.06.2024. Accordingly, respondents are directed to make a lawful offer after obtaining completion certificate as per date stipulated in the agreement. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time.

30. Admittedly, complainant has already paid substantial amount to the tune of Rs.41,46,213/- against total consideration amounting to Rs.48,88,372/- However, remaining outstanding payments are still due on part of the complainant. Accordingly, respondents are also entitled to interest at same rate of interest for the period of delay, if any, caused by the complainants in payment of the outstanding amounts, as respondents are liable to pay in case of delay in offering possession from date stipulated in agreement for the same, i.e., 10.75% as on date of the order. It is further directed that period between date of filing of present complaint, i.e., 14.03.2022 and date of order, i.e., 02.11.2023 shall be treated as zero period for both parties for purposes and no charges/interest would be receivable/payable for said period.

31. The complainant is also seeking compensation on account of mental agony, torture and harassment and legal cost incurred by the complainant. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers*



Pvt. Lid. vs State of U.P. & ors.” has held that an allottee is entitled to claim compensation under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

32. 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) Respondents are directed to make a fresh offer of possession after obtaining completion certificate from the competent authority as per time stipulated in the plot buyer's agreement. Said offer letter shall be accompanied with statement of accounts showing payables and receivables at that time.



- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of offer of possession made to him.
- (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%, which is the same rate of interest, which the promoter shall be liable to pay to the allottees in case of delay in offering the possession from the date stipulated in plot buyer agreement.
- (iv) The respondents shall not charge anything more from the complainant which is not part of the agreement to sell.
- (v) Respondents are also liable to pay the costs of Rs. 10,000/- payable to Authority and Rs. 5,000/- payable to complainant imposed vide order dated 09.08.2023 for non-filing of reply on time.

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


.....
Dr. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]