



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3331 of 2022
Date of filing.:	28.12.2022
First date of hearing.:	02.03.2023
Date of decision.:	29.04.2024

Rajnendra Kumar Sharma S/o Sh. Kapil Dev Sharma
R/O AVE-58FF/Sector – 81 BPTP Parkland,
Near DPS School, Faridabad 121004.

....COMPLAINANT

VERSUS

M/s BPTP Limited
office address plot no. 28,
ECE House, K.G Marg, Connaught Circus,
New Delhi- 110001

....RESPONDENT

CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Sh. Rajnendra Kumar Sharma, Complainant in person
through VC
Sh. Hemant Saini, Counsel for the respondent.

ORDER (NADIM AKHTAR-MEMBER):

1. Present complaint has been filed on 28.12.2022 by the 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 fulfill 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.	"Park 81", Sector 81, Faridabad.
2.	Nature of the project.	Residential
4.	RERA Registered/not registered	Registered FBD-249-2021
5.	Details of unit.	VL1-14-GF 275 sq. yards
6.	Date of builder buyer agreement	31.07.2015
7.	Due date of possession(36+6 months)	31.01.2019



8.	Possession clause in BBA (Clause 7.1)	<p><u>Clause 7.1:-</u></p> <p><i>“The Seller/Confirming party proposes to make possession of the unit to the purchaser(s) within the commitment period along with Grace Period & as per clause 2.4 commitment period shall mean subject to force majeure circumstances, intervention of statutory authorities and purchaser (s) having timely complied with all its obligations, formalities and/or documentation, as prescribed requested by seller/confirming party under this agreement and not being in default under any part of this agreement, including but not limited to the timely payment of all installments of the total sale consideration and other charges as per the payment plan opted, the seller/confirming party shall offer the possession of the unit to the purchaser (s) within a period of 36 (Thirty six) months from the date of execution of this agreement. Plus grace period of 180 days thereafter.</i></p>
9.	Basic sale consideration	₹ 31,61,225.44/-
10.	Amount paid by complainant	₹ 30,65,466/-
11.	Offer of possession.	Not given.



**B. FACTS OF THE PRESENT CASE AS STATED BY THE
COMPLAINANT IN THE COMPLAINT:**

3. Facts of the complaint are that the complainant's wife had signed an Agreement to Sell with M/s Tirupati Realbuild (Pvt) Ltd on 17.06.2015 for unit no. VL1-14-GF measuring area of 275 Sq. yards situated at Sector 81, BPTP, Parkland, Faridabad and requested the BPTP Ltd. to transfer ownership in the name of Mrs. Mrinalani Sharma. A copy of the Agreement to Sell and the acknowledgement of ownership transfer is annexed herewith as Annexure-C/1. Accordingly, the respondent company nominated the name of Ms. Mrinalani Sharma for the said unit vide nomination letter dated 30.06.2015. Copy of said letter is annexed herewith as Annexure -C/2.
4. That the Builder Buyer Agreement (BBA) for the unit in question was executed between the parties on 31.07.2015. In terms of clause 2.4 of it, possession was supposed to delivered within 36 months + 180 days grace period from date of agreement. It is alleged by complainant that unit is still not complete and stands under construction as of now. A copy of the Builder Buyer Agreement is annexed herewith Annexure -C/4.
5. That complainant has already made payment of Rs 30,65,466/- against the basic sale price of Rs 31,61,225.44/-. Further, it is stated that



respondent vide letter dated 10.11.2016 raised demand for the amount of Rs. 23,695/- toward VAT in view of the Government Notification dated 12.09.2016, which was payable by 25.11.2016. Copy of the demand letter dated 10.11.2016 and receipt dated 23.11.2016 towards payment by complainant are annexed as Annexure C/5.

6. That Mrs. Mrinalani Sharma expired on 29.03.2019, and her legal heirs/successors transferred the above said unit to her husband Sh. Rajendra Kumar Sharma (Complainant) on the basis of documentation submitted to the company. A copy of death certificate and transfer letter are annexed as Annexure C/6.

C. RELIEFS SOUGHT

7. That the complainant seeks following relief and directions to the respondent:
 - i. Direct the respondent to pay complainant the delay compensation charges w.e.f from 18-12-2015 (not specified in pleadings/arguments as to how this date has been arrived at) as per prevailing Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR +2% (9.30%) HRERA regulations.
 - ii. The respondent to complete pending work, handover the floor and execute the conveyance deed in favour by the complainant at earliest.
 - iii. Direct the respondent to pay the complainant Rs 8,00,000/- (Rupees Eight Lac Only) for mental agony/harassment and for



deficiency of service and Rs 50,000/- (Rupees Fifty Thousand only) towards cost of legal expenses; and.

iv. Pass any other order(s)/ Direction(s) that this Hon'ble Court may deem fit and proper in the present facts and circumstances.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 04.12.2023 pleading therein:

8. That unit was originally allotted to Mr. Ashok Kumar vide allotment letter dated 16.03.2010 who further transferred it to Tirupati Realbuild Pvt. Ltd and was further transferred to Mrs. Mrinalani Sharma, i.e. wife of the complainant vide agreement to sell dated 17.06.2015, after her complete satisfaction in respect to the development status etc. Unit was later substituted in the name of complainant on account of death of Mrs. Mrinalani Sharma.
9. That a Floor Buyer's Agreement dated 31.07.2015 (the "FBA") was executed between Mrs. Mrinalani Sharma and the Respondent. The terms and conditions of FBA are binding on the Parties. The respondent gave the complainant an inaugural discount of Rs. 2,01,780/-. A copy of the FBA is annexed as Annexure R-5.
10. That the demands were raised by the Respondent as per the agreed payment plan between the parties. It is pertinent to mention here that the



Complainant, from the beginning, defaulted in timely payment of the installments and the Respondent issued multiple reminders to the Complainant. The copies of payment request letters, payment receipts and reminders are annexed as Annexure R6 (Colly).

11. That the proposed due date of offer of possession, as per clause 7.1 read with clause 2.4 and 2.12 of the FBA, is 36 months from the date of execution of the Floor Buyer's Agreement along with a grace period of 180 days. However, the same was subject to the complainant having complied with the terms and conditions of the Agreement, force majeure events and other circumstances beyond the control of the Respondent. Thus, the proposed due date comes out to be 31.01.2019.
12. That construction got delayed due to various reasons/activities beyond control of respondent like bans by National Green Tribunal vide order dated 19.07.2016, Environment Pollution (Prevention and Control) Authority vide order dated 07.11.2017 and 01.11.2019, ban on construction activities in NCR region by Hon'ble Supreme Court vide order dated 04.11.2019 in case M.C. Mehta vs Union of India. Additionally the entire world was hit by Covid-19 Pandemic in year 2020 which resulted in various nation-wide lockdowns and and curfews to curb it. Therefore, the delay caused by aforesaid factors in the seamless execution of project was genuinely due to force majeure circumstances and hence said delay should not be added while computing the delay.



13. That the construction was also affected due to non-receipt of timely payment against the unit by the allottee. Despite number of difficulties, the respondent after completing construction of project had applied for the Occupancy Certificate on 12.10.2021. Copy of said application is annexed as Annexure R-7.
14. The respondent contends that the competent authority was bound to revert to the application for Occupation Certificate within 60 days, failing which it shall be deemed to be have the Occupancy Certificate vide clause 4.10(4) and 4.10(5) of Haryana Building Code,2017. Term of 60 days has expired on 11.12.2021 and no response has been received from the competent Authority, hence the application dated 11.12.2021 shall act as Occupation Certificate. Respondent further stated that since the FBA was executed prior to the implementation of RERA Act, 2016 and Rules,2017, the act cannot be allowed to re-open or re-write a contract. Hence, the present complaint is liable to be dismissed.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. During oral arguments, learned counsel for the complainant reiterated the submissions as stated in the complaint and pressed upon relief of possession alongwith delay interest. Ld. counsel for the respondent argued that construction work of project is complete and unit has already received deemed occupation certificate on 12.10.2021. Further, he stated



that, in case, complainant is interested in refund then an offer of refund of paid amount with interest @9% is available for him. To this, complainant refused to accept said offer.

F. ISSUES FOR ADJUDICATION

16. Whether the complainant is entitled to get possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

17. **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, 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 ensure that whatever were the obligations of the promoter as per 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 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.

18. Objections raised by the respondent regarding force majeure conditions.

The obligation to deliver possession within the period stipulated in the Builder Buyer Agreement, i.e, 36 months from the date of execution of 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 such as the NGT order, bans by Environment Board, Covid-19 outbreak etc.. Out of said factors, only two bans, i.e., NGT ban (30 days) vide order dated 19.07.2016 and Environment Pollution Board (90 days) vide order dated 07.11.2017 falls before the deemed date of



possession, i.e., 31.01.2019. Total period of bans comes out to 120 days as pleaded by respondent. It is pertinent to mention here that respondent in addition to commitment period has already sought grace period of 180 days to deliver possession. Said grace period is duly incorporated in agreement with a purpose to cover these kind of activities/bans hampering the construction of project. Time period of ban of 120 days gets duly covered in said grace period by allowing the same to respondent. Further, factors like ban by Environment Boards vide order dated 01.11.2019, 04.11.2019 and Covid-19 Pandemic are not convincing enough as the due date of possession was 31.01.2019 and the orders of Environment Board/Hon'ble Supreme Court referred by the respondent pertains to November,2019, 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 septemeber,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 by allottee vis-à-vis the payment schedule opted by her. Construction status with latest photographs has not been placed on record to support the fact that respondent has fulfilled its obligations and it is complainant who is shying away from his duties/obligations. 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.

19. On merits, it has been admitted between both the parties, upon booking, a unit bearing no. VL-1-14-GF, Ground Floor, measuring 275 sq. yds or 1402 sq. ft had been allotted to original allottee in the project of the respondent namely; “Park-81” situated at Sector 81, Faridabad, Haryana vide allotment letter dated 16.03.2010. Said allotment further got transferred to second allottee-Tirupati Realbuild Pvt Ltd and then to third



allottee-Mrs. Mrinalani Sharma, wife of complainant vide agreement to sell dated 17.06.2015. Respondent admits the fact that unit was substituted in name of complainant vide letter dated 16.09.2022 after death of Mrs. Mrinalani Sharma on 29.03.2019. As per floor buyer agreement dated 31.07.2015 executed with third allottee, possession of the unit should have been delivered by 31.01.2019 (36+6 months). However, even after a lapse of more than five years respondent has not handed over physical possession of unit to the complainant.

20. In respect of status of unit/project, it is the stand of respondent that unit has received deemed occupation certificate on 11.12.2021. Background of the matter is that respondent vide application dated 12.10.2021 had applied to the Department of Town and Country Planning for Occupation Certificate. As per submission of respondent, no objection to it was raised by the concerned department and accordingly by virtue of clause 4.10 (4) and 4.10(5) of Haryana Building Code,2017 said application will be considered as deemed occupation certificate after expiry of 60 days. Copy of application is attached at page no. 151 of written statement. Herein, it is relevant to mention that if respondent has already obtained 'deemed occupation certificate' then why an offer of possession was not made to complainant till date. No explanation of any kind has been provided in this context. Further, application for occupation certificate is attached with written statement but no



communication thereafter which must have took place between the department and respondent-promoter, has not been placed on record to have better clarity of events/transactions. Besides this, respondent is well aware of fact that Authority deals with complaint cases in a summary manner but still no proper documents received/granted by Department is placed on record in respect of deemed occupation certificate. Respondent after expiry of 60 days should have communicated to the department about deemed occupation certificate so that fact of receipt of it can be established whenever need arises, like in present case. Mere pleading of receipt of occupation certificate without proper document issued by concerned department is not a substantial proof in favor of respondent.

21. Authority further observes that as per agreement, possession of the unit should have been delivered by 31.01.2019 but it is an admitted fact that respondent had miserably failed to fulfill its obligation to deliver the possession of the unit till date. Now, even after a lapse of 5 years, respondent has not made any offer of possession to the complainant. On the other hand, complainant does not wish to withdraw from the project and is rather interested in getting the possession of his unit. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under :-



“18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

.....

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”.

22. In these circumstances, the provisions of Section 18 of the Act clearly come 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 complainant till date. So, the Authority hereby concludes that the complainant is entitled for the delay interest from the deemed date, i.e., 31.01.2019 up to the date on which a valid offer duly supported with occupation certificate is sent to complainant. 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;

23. 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 (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”..”

24. 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. 29.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.85%.
25. 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 10.85% (8.85% + 2.00%) from the due date of possession i.e 31.01.2019 till the date of a valid offer of possession.

26. Authority has got calculated the interest on total paid amount from due date of possession i.e 31.01.2019 till the date of this order i.e 29.04.2024 which works out to ₹ 17,45,939/- and further monthly interest payable for delay of every month till valid offer is made to complainant of ₹ 27,337/- 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 29.04.2024
1.	30,65,466.96/-	31.01.2019	17,45,939/-
	Total = ₹ 30,65,466.96/-		₹ 17,45,939/-
2.	Monthly interest		₹ 27,337/-

27. Further, the complainant is seeking compensation for mental agony/harassment and cost of litigation. 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 Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim



compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

28. 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 ₹ 17,45,939/- (till date of order i.e 29.04.2024) to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order and further monthly interest @ ₹ 27,337/- payable w.e.f 29.05.2024 till the offer of possession is made to complainant after receipt of occupation certificate. Respondent shall get the conveyance



deed executed within 90 days of handing over of possession of unit to the complainant.

- (ii) Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered 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, 10.85% 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 more from the complainant which is not part of the agreement to sell.

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


.....
CHANDER SHEKHAR
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]