

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

Complaint no.:

4821 of 2023

Date of decision:-

09.10.2024

Hari Kishor Sahu
R/o:-N-1705, Tower-N, BPTP Spacio,
Sector-37D, Gurugram, Haryana.

Complainant

Versus

1. M/s. BPTP Ltd
Regd. office:M-11, Middle Circle,
Connaught Circle, New Delhi-110001.

2. M/s. Countrywide Promoters Pvt. Ltd
Regd. Office: 28, ECE House, 1st Floor,
K.G. Marg, New Delhi-110001.

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Green Agarwal

Harshit Batra

Complainant

Respondents

ORDER

1. The present complaint dated 25.10.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the

Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

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 and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"SPACIO", Sector-37D, Gurugram, Haryana.
2.	Project area	43.558 Acres.
3.	Nature of Project	Group Housing Colony
4.	DTCP license no. and validity status	1. 83 of 2008 dated 05.04.2008 Valid upto 2. 94 of 2011 dated 24.10.2011 Valid upto
5.	Name of Licensee	M/s Super Belts Pvt. Ltd. C/o M/s Countrywide Promoters Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered (For Tower-8 to Tower-13) (10.22 acres) 300 of 2017 dated 13.10.2017 Valid upto 12.10.2020
7.	Unit No.	N-1705, 17 th Floor, Tower-N (As per page no.94 of complaint)
8.	Unit area admeasuring	1865 sq. ft. (super area) (As per page no.94 of complaint)
9.	Welcome Letter	12.08.2019

		(As per page no.29 of complaint)
10.	Allotment letter	12.08.2019 (As per page no.30 of complaint)
11.	Date of execution of buyer agreement	29.01.2021 (As per page no.83 of complaint)
12.	Possession clause	2.7 Commitment Period “...The seller /confirming party shall offer the possession of the unit to the purchaser(s) within a period of 30 months from the date of flat buyer’s agreement. ” 7.1 Possession and holding charges “The applicant further agrees and understands that the seller/confirming party shall additionally be entitled to grace period of six (6) months after the expiry of the said commitment period for making an offer of possession of unit. ”
13.	Due date of possession	29.01.2024
14.	Basic Sale Consideration	Rs.71,91,369/- (As per page no.94 of complaint)
15.	Amount paid by complainant	Rs.89,82,824.70/- (As stated by the complainant at page no.23 of complaint)
16.	Occupation Certificate	30.07.2020 (for tower-T8, T9, T11 & ESW Block-A&B) (As per page no.55 of reply) And 15.01.2021 (for tower-T10, T12, T13 & EWS Block-B) (As per page no.59 of complaint)
17.	Offer of possession	21.08.2020 (As per page no.63 of complaint)
18.	Notice for Termination	18.08.2021 (As per page no.118 of complaint)
19.	NOC	31.08.2021



	(For giving the possession for carrying out fit-outs)	(As per page no.120 of complaint)
20.	Conveyance deed	03.09.2021 (As per page no.125 of complaint)

B. Facts of the complaint:

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

- I. The respondent launched a residential project in the name of "SPACIO" situated at Sector-37D, Gurugram and the complainant was allured by the advertisements of the respondent and believing them, the complainant booked a unit in the aforesaid project.
- II. That vide allotment letter dated 12.08.2019, unit no. N-1705 was allotted on the 17th Floor, admeasuring super area of 1,865 sq. ft. and paid a sum of Rs.4,00,000/- and the same was acknowledged by the respondent vide receipt no. 2019/1400001843.
- III. That the respondents kept on sending demand letters demanding payment of Rs.28,00,000/- without even executing any Flat Buyer's Agreement, which is a clear violation of section 13 of the Act, 2016.
- IV. In the meantime, the complainant had applied for a home loan from ICICI Bank and the same was granted vide offer letter dated 13.03.2020, However, due to the absence of any written Agreement to sell, the complainant could not avail the same and ultimately it was cancelled.
- V. That the respondent sent an email dated 11.05.2020, whereby it was admitted that they were liable to handover the possession



of the said unit by March, 2020, but the project was being delayed. Contents of the email is reproduced hereinunder:

"As mentioned in our earlier communications as well, the project is nearing completion and we would also like to mention that had this general lockdown owing to pandemic COVID19 not happened we were confident of rolling out Letters for Offer of Possessions by March 2020."

- VI. That the respondents kept on raising illegal demands of payment in the absence of a written Flat Buyer Agreement and even offered the possession of the said unit on 21.08.2020. The complainant decided to visit the project site himself and was in utmost shock and disbelief to see that the internal works of the unit were absolutely incomplete, rendering it inhabitable. Even the works that had been completed were not as per the sanctioned plans.
- VII. That the respondent purposely delayed the execution of Flat Buyer Agreement to dupe the complainant in their nefarious net and kept on raising demands of payment. After much insistence by the complainant, the respondent finally executed the Flat Buyer Agreement on 29.01.2021, being fully aware of the fact that as per the terms of the said FBA, the due date of possession will be 30 months calculated from the date of execution of the said FBA, which is unilateral, arbitrary and illegal.
- VIII. Thereafter, vide its letter dated 27.07.2021, the respondents raised a demand including delayed payment interest charges to the tune of Rs.7,36,524/- which is extremely illegal and unjust as the respondents have charged interest for the period starting before the execution of the Agreement. When the complainant



objected to pay the interest illegally charged, the respondents sent a Termination letter dated 18.08.2021, threatening the complainant of cancelling the allotment of the unit.

- IX. Thus, afraid to lose the allotment of the unit, the complainant succumbed to the illegal and unjust demands of the respondents and paid a sum of Rs.89,82,824.70/- as full and final payment of the total consideration along with interest of Rs.7,36,514/-
- X. Thereafter, the respondent issued a No Objection Certificate dated 31.08.2021, giving possession of the unfinished and inhabitable unit only for the purpose of fit outs, which is again arbitrary, and illegal in the eyes of Law and further in violation of provisions of the RERA Act, 2016.
- XI. That on 01.09.2021, Conveyance deed was executed between the parties and the respondent had assured that the said unit shall be completed at the earliest and the complainant would be able to occupy the same before the upcoming festive season.
- XII. That the respondent never mentioned the due date of possession anywhere on the Allotment letter or the demand letters etc, and neither mentioned the actual carpet area of the unit and charged consideration on the super area, which is highly illegal and unlawful.
- XIII. It is further submitted that as per the sanctioned plans, the builder was to construct a club house. However, the respondent has constructed a community hall without any amenities as per the sanctioned plans, and has been charging membership

charges @Rs.1400/- per month, which is highly illegal, unjust and arbitrary.

- XIV. That the respondent illegally appointed a maintenance agency without providing any prior intimation to the complainant or any notice of Annual General Meeting for the appointment of maintenance agency, and has been charging maintenance charges @Rs.2.80/sq.ft., per month.
- XV. That the respondent had illegally increased the super area of the allotted unit in the offer of possession letter without any justification, adding additional burden on the complainant while the carpet area remains the same.
- XVI. That the Authority had constituted a Committee for the in-depth analysis of several projects of the respondents, including the project in question, "Spacio", wherein the committee had found out that the additional charges imposed by the respondent, including, increase in super area, Cost escalation & STP charges, etc are unreasonable and unjustified.
- XVII. That the respondent offered possession for fit outs and such possession of an incomplete unit to the allottee is an outright violation of the rights of the allottees under the provisions of RERA act as well the agreement executed between complainants and respondent. The complainant demands enquiry to be initiated against the respondent to determine as to how the respondent was able to obtain the Occupation Certificate for the said tower/unit when the said unit is prima facie evident to be under construction/ incomplete/inhabitable.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to finish all the work in the unit at the earliest.
 - ii. Direct the respondent to pay delayed possession charges along with interest at the prescribed rate of interest.
 - iii. Direct the respondent to refund the amount paid by the complainant as delayed payment interest , illegally charged from the complainant by the respondent along with interest.

D. Reply by respondent:

5. The respondents have filed a joint reply and made following submissions:
- I. At the very outset, it is imperative to note that the name of the respondent no. 2 shall be deleted from the array of parties as respondent no. 2 is only a confirming party in the Agreement. Moreover, no specific relief has been sought by the complainant from respondent no. 2. Therefore, it is most humbly submitted that the name of respondent no. 2 shall be deleted from the array of parties.
 - II. That the complainant being interested in the group housing real estate development project known under the name and style of "Spacio - Park Serene" located at Sector 37-D, Gurugram, Haryana applied for the allotment of the unit vide an application form dated 12.08.2019.
 - III. Pursuant to booking unit bearing number N-1705 in Tower-N, tentatively admeasuring 1855 sq. ft. was allotted to the complainant vide Allotment Letter dated 12.08.2019. That the complainant consciously and wilfully opted for possession linked payment plan as per their choice for remittance of the sale consideration for the unit in question.

- IV. At this stage, it is categorical to note that after the allotment of the unit and before the execution of the Builder Buyer Agreement between the parties, the construction of the unit was completed by the respondents and the respondents received the Occupation Certificate on 30.07.2020.
- V. That the *bonafide* of the respondent no. 1 is imperative to note that as soon as the respondents received the Occupation Certificate from the concerned authorities, they offered possession of the unit to the complainants even after obtaining only 15 % of the total sales consideration of the unit.
- VI. That the Offer of possession dated 21.08.2020 categorically notes that out of the total sale consideration of Rs.82,38,799.73/-, the respondents had only received an amount of Rs.14,61,110.86/-.
- VII. That in order to complete all the formalities with respect to the unit, the respondents, in his most *bonafide* conduct, had executed the Builder Buyer Agreement dated 29.01.2021 with the complainant.
- VIII. That the rights and obligations of the allottee as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement which continue to be binding upon the parties thereto with full force and effect. As per clause 7.1 of the Agreement read with clause 2.7, the due date of offer of possession of the unit was 30 months from the date of execution of the agreement along with a grace period of 6 months. Subject, to the *force majeure* circumstances, intervention of statutory authorities and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement. Thus, the *proposed* due date for

offer of possession comes out to be 29.01.2024 (including the grace period).

- IX. At this stage, it is categorical to note that the due date of offer of possession of the unit is 29.01.2024 and the complaint was filed by the complainant in the year 12.10.2023, i.e., before the due date of offer of possession. Moreover, the possession of the unit has already been offered to the complainant on 21.08.2020 hence, the present complaint filed by the complainant is a pre-mature complaint and is liable to be dismissed on this ground alone.
- X. That without prejudice to the above-noted contentions, it is imperative to note that the complainant has received the notice of offer of possession of the unit on 21.08.2020, i.e., much prior to the due date of offer of possession of the unit. Hence, the applicability of Section 18 does not false under the present case.
- XI. Hence, as noted above, the respondent had already completed the construction of the project and had obtained the Occupation Certificate on 30.07.2020 and therefore is not liable to pay any delayed possession charges to the Complainant.
- XII. At this stage, it is imperative to mention here that the due date of delivery of the unit was subjective in nature and was dependent on the force majeure circumstances and the purchaser/allottee complying with all the terms and conditions of the Agreement along with timely payments of instalments of sale consideration.
- XIII. That it was the obligation of the complainant to make the payments as per the adopted payment plan and agreed terms and conditions of the agreement. That the timely payment of the sales consideration of the unit was the essence of the Agreement executed between the parties

as per clause 4.13 of the Agreement. That in case of default by the complainant, the complainant was bound to make the payment of interest.

- XIV. At this stage, it is imperative to note that due to failure of the complainant in remitting the due instalments on time, the respondent was left with no other option but to cancel the unit and hence, the unit was cancelled by the respondent on 18.08.2021
- XV. That after the cancellation of the unit due to failure of the complainant to pay the outstanding dues, the respondent once again approached the complainant and settled the dispute with respect to the payments of due instalments and hence after resolving of the said dispute and payment of the due instalments by the complainant, the parties executed a Conveyance Deed dated 01.09.2021. That as per the Clause 3 of the Conveyance Deed dated 01.10.2018, it is categorically noted that the complainant took over the physical possession of the said unit only after complete inspection and only after being completely satisfied with the unit.
- XVI. Moreover, after the execution of the Conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties including delay compensation.
- XVII. That the present complaint is barred by limitation as the possession was offered to the complainant on 21.08.2020 and even if the complainant had any grievances, whatsoever, then the issue can be raised at a reasonable period of time after offering the possession of the unit but the complainant approached this forum in the year 12.10.2023,

i.e, after 3 years 1 month and 21 days of taking of offering possession of the unit and hence, the present complaint is liable to be dismissed on this ground alone.

XVIII. That in light of the *bona fide* conduct of the respondents, the peaceful possession having been taken by the complainant, non-existence of cause of action against the respondents, claim being barred by limitation and the frivolous complaint filed by the complainant, this complaint is bound to be dismissed with costs in favor of the respondents.

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

E. Jurisdiction of the authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I. Objection regarding complaint being barred by limitation.

11. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at



for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

12. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
13. In the present matter the cause of action arose on 21.08.2020 when the offer of possession was made by the respondent. The complainant has filed the present complaint on 25.10.2023 which is 3 years 2 months and 4 days from the date of cause of action. In the present case the three year period of delay in filing of the case needs to be calculated after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

F.II. Objection regarding wrongful impleadment of respondent no.2 in the array of parties.

14. The respondent-promoter has raised an objection of wrongful impleadment of respondent no.2 i.e., M/s. Countrywide Promoters Pvt. Ltd. in the array of parties. The respondent-promoter stated



that respondent no. 2 is only a confirming party in the Agreement and no specific relief has been sought by the complainant from respondent no.2.

15. As per record available the respondent no.2 is a Confirming party to the Agreement dated 04.02.2011 and was granted licence by the Director, Town and Country Planning, Haryana vide licence no. 83 of 2008 and 94 of 2011. The respondent no. 2 cannot escape its responsibility and obligations to the allottees of the project being licensee of the project and is covered under the definition of promoter within the meaning of 2(zk)(i),(v).

16. The promoter has been defined in section 2(zk) of the Act. The relevant portion of this section reads as under: -

"2. Definitions. — In this Act, unless the context otherwise requires —

(zk) "promoter" means, —

(i)

(ii) a person who develops land into a project, whether or not the person also constructs structures or any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures there; or

(iii) xxx

(iv) xxx

17. As per aforesaid provisions of law, respondent no.1 & 2 will be jointly and severally liable for the completion of the project. Whereas, the primary responsibility to discharge the responsibilities of promoter lies with respective promoter in whose allocated share the apartments have been bought by the buyers. In view of the same, the contention/objection of respondent no.1 stands rejected.

G. Findings on the relief sought by the complainant.

- G.I Direct the respondent to finish all the work in the unit at the earliest.**
- G.II Direct the respondent to pay delayed possession charges along with interest at the prescribed rate of interest.**
- G.III Direct the respondent to refund the amount paid by the complainant as delayed payment interest , illegally charged from the complainant by the respondent along with interest.**

18. The aforementioned reliefs are interrelated and thus are being addressed together. In the present complaint, the complainant acquired a unit numbered N-1705 of Tower-N, measuring 1865 sq. ft, along with one covered car parking space, for a basic sale consideration of Rs.71,81,369/- in the project "Spacio" being developed by the respondents. The unit was allotted to the complainant via an allotment letter dated 15.05.2019, followed by the execution of a Flat Buyer's Agreement on 29.01.2021. According to clause 2.7 of the aforementioned agreement, the respondent committed to hand over possession of the unit to the complainant by 29.01.2024. The said clause is reproduced below:

" Clause 2.7 "Commitment Period"

The seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 30 (Thirty) months from the date of this Flat Buyer's Agreement"

"Clause 2.17 "Grace Period"refers to the additional period of 6 months after the expiry of the Commitment Period for making an offer for possession of the Unit"

[Emphasis supplied]

19. Therefore, the due date for handing over possession to the complainant was 29.01.2024. The respondent obtained the occupation certificate for Tower-N from the competent authorities



on 30.07.2020. Subsequently, the respondent issued an offer of possession to the complainant on 21.08.2020. It is apparent from several payment receipts appended to the complaint that the complainant has thus far paid Rs.89,82,824/-against the basic sale consideration of Rs.71,91,369/-, which exceeds 100% of the basic sale consideration for the subject unit.

20. The respondent issued a No Objection certificate on 31.08.2021, offering possession for the purpose of fit-outs. On 01.09.2021, conveyance deed was executed in favour of the complainant. Here, in the present complaint the matter of utmost consideration is the fact that whether the possession of the unit has been handed over or not to the complainant till date. The complainant has submitted that as per various e-mail conversations that took place between the parties, the respondent has clearly admitted that the possession has not been handed over to the complainant. The same E-mail conversations are reproduced below:

" E-mail dated 08.03.2022

Greetings from BPTP,

With reference to your below mail, we wish to affirm you that it is our intention to handover your unit to you at the earliest possible as you are our valuable customers.

Please be informed that we have already requested site team to expedite the finishing works in your unit as soon as possible & tentatively will be handed over your unit on or before 21-3-2022"

E-mail dated 09.09.2022:

"Reference to your email, we are sorry for the inconvenience caused due to delay in handover.

Please allow us sometime to take an update from project team for final handover timelines"

21. Vide proceedings dated 09.10.2024, the respondents were directed to submit an affidavit regarding the date of handing over of



possession of the unit to the complainant. Vide proceedings dated 20.11.2024, the respondent submitted that the respondent wishes to place on record certain documents w.r.t handing over of possession and sought a week's time to place on record the same. On 11.12.2024, the respondent filed an affidavit stating that the Occupation Certificate was received on 30.07.2020 and the offer of possession was made on 21.08.2020. Thereafter, the unit was handed over for fit outs on 21.08.2021 with the execution of the "NOC for fit outs" and the keys of the unit were handed over to the complainants on the same day. The title of the unit was also transferred to the complainant with the execution of the Conveyance Deed on 01.09.2021. After the handover of the unit to the complainant, certain works were required by the complainant and the same were undertaken by the respondent. As on date, the complainant is residing in the unit and the same is evident from the pictures of the unit taken from outside the unit. The pictures show the presence of decorative items on the door, plants and air conditioner outlet in the balcony, which evidently shows the unit has been occupied. Along with the above mentioned pictures, the respondent placed on record an affidavit and submitted that the keys of the unit were handed over to the complainant on 21.08.2021. The relevant part of the affidavit is reproduced below:

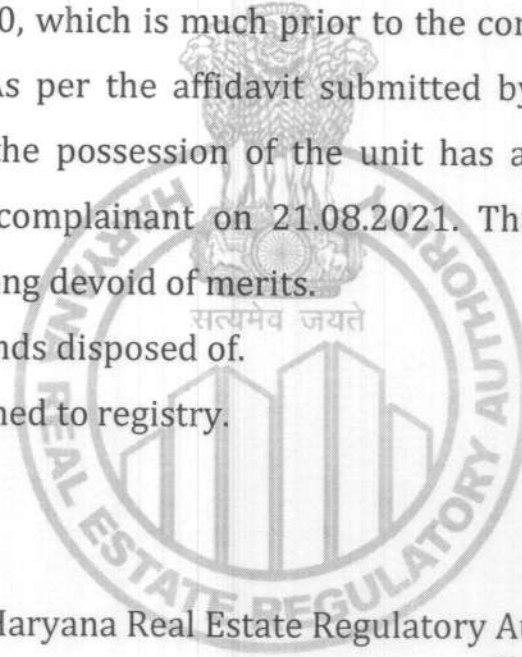
"3. I say that thereafter, the unit was handed over for fit outs on 21.08.2021 with the execution of the 'NOC for fit outs' (annexed at page 120 of the complaint). I say that the keys of the unit were handed over to the complainant on this day."

22. On consideration of the documents available on record and submissions made regarding contravention of provisions of the



Act, the Authority is of the view that the allotment letter was issued in favour of the complainant on 12.08.2019 and thereafter, the Buyer's Agreement was executed on 29.01.2021. As per Clause 2.7 read with Clause 7.1 of the Buyer's agreement, the due date of possession was 29.01.2024. The respondent had obtained the Occupation Certificate from the competent authorities on 30.07.2020 and thereafter offered possession to the complainant on 21.08.2020, which is much prior to the committed due date for possession. As per the affidavit submitted by the respondent on 11.12.2024, the possession of the unit has already been handed over to the complainant on 21.08.2021. Thus, the complaint is dismissed being devoid of merits.

23. Complaint stands disposed of.
24. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.12.2024

HARERA
GURUGRAM