

PROCEEDINGS OF THE DAY		S1
Day and Date	Friday and 07.03.2025	
Complaint No.	CR/4847/2023 Case titled as Bimla Kaushik and Hari Om Kaushik VS Reliable Realtech Private Limited	
Complainant	Bimla Kaushik and Hari Om Kaushik	
Represented through	Ms. Adda Khursheed proxy counsel	
Respondent	Reliable Realtech Private Limited	
Respondent Represented	Ms. Tanya Arora Advocate	
Last date of hearing	03.01.2025	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings-cum-order		
<p>The present complaint was filed on 25.10.2023 and the reply on behalf of respondent has been filed on 03.01.2025.</p> <p>The complainants have filed the present complaint stating that as per possession clause 12 of the agreement dated 27.05.2011, the respondent is obligated to handover the possession of the unit within 3 years from the date of sanctioning of building plans. The date of sanctioning of building plans is not on record, therefore, the due date is calculated as 3 years from the date of agreement and hence, the due date comes out to be 27.05.2014. However, the respondent has delayed in offering possession, thus violated terms of the BBA and section 18 of the Act.</p> <p>The complainants in the present complaint are seeking following reliefs:</p> <ol style="list-style-type: none">i. Direct the respondent to pay delayed possession charges to the complainants from the due date of possession at the prescribed rate of interest.		

The authority observes that the complainants booked a unit in the project of the respondent namely, Antriksh Heights, Sector-84, Gurugram and was allotted a unit bearing no. AG-1004 on 10th floor. The builder buyer agreement was executed between the complainants and the respondent on 27.05.2011. The total sale consideration of the unit was Rs. 36,63,750/- and the complainants have paid more than consideration amount i.e., Rs. 42,25,934/-. The occupation certificate for the project was received on 19.05.2016 and the possession was offered on 01.06.2016. Subsequently the conveyance deed of the allotted unit was executed on 16.11.2022.

The Authority is of the view that though the possession of the unit was to be offered on or before 27.05.2014 after completion of the project but the same was offered only on 01.06.2016 after receipt of occupation certificate on 19.05.2016 and ultimately leading to execution of conveyance deed of the same on 16.11.2022. So, limitation if any, for a cause of action would accrue to the complainants w.e.f. 01.06.2016 and not from 16.11.2022. Therefore, the limitation period of three years stands expired on 01.06.2019 and accordingly, the period between 15.03.2020 till 28.02.2022 as excluded by 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 shall not be excluded while calculating the period of limitation as the limitation expired prior to the beginning of the said period. The present complaint seeking delay possession charges and other reliefs was filed on 25.10.2023 which is 7 years 4 months and 24 days from the date of cause of action.

The complainants remained dormant over their rights for more than 7 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.

CR/1847/2023

One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time. But, it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.

Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]**, the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present relief is not maintainable after such a long period of time. The procedure of law cannot be allowed to be misused by the litigants even in cases where allottees have availed certain benefits prior to the execution of conveyance deed. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the present relief is not maintainable and the same is declined.

ii. Direct the respondent to remove all the structural deficiencies pertaining to the unit in question.

As far as relief of structural defect is concerned the complainants have stated that there is a severe spelling of concrete, corrosion cracks in balcony slab/beam as per the visual examination carried out in November 2022.

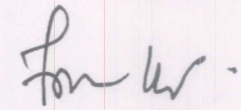
CR/24/2023

The authority is of the view that section 14(3) of the Real Estate (Regulation and Development Act) 2016 is relevant and reproduced hereunder for ready reference:

(3) In case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

The Authority is of the view that the complainants are entitled to claim compensation under sections 14 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of structural deficiencies.

The complaint stands disposed of. File be consigned to registry.



Arun Kumar
Chairman
07.03.2025