

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

Complaint no. : 1508 of 2024
Date of order : 12.03.2025

Dinesh Chander Bahl
Address: Godhuli 5C37-A, Garcha Road,
Phari Gariahat Ballygunge, Kolkata.

Complainant

Versus

M/s Blackberry Realcon Pvt. Ltd.
Office at: - Floor-11th, Paras twin Towers, Tower-B,
Sector-54, Golf Course Road, Gurugram-122002.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Hemant Phogat (Advocate)
Himanshu Singh (Advocate)

Complainant
Respondent

HARERA
ORDER
GURUGRAM

1. The present complaint 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 under

the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of project	"Paras Square"
2.	Nature of project	Retail Shop
3.	Location of project	Sector-63-A, Village-Behrampur, Gurugram.
4.	RERA Registered	Registered Vide registration no. 13 of 2018 Dated- 06.09.2018
5.	DTCP Licence	No.-23 of 2013
6.	Allotment letter	12.06.2014 (As on page no. 12 of reply)
7.	Builder Buyer Agreement	02.12.2014 (As on page no. 16 of complaint)
8.	Amended Buyer' s Agreement	12.03.2019 (As on page no. 55 of complaint)
9.	Shop no.	39, Floor-Ground, Type-Retail (As on page no. 19 of complaint)
10.	Shop Area	430 sq.ft. [Super-Area] (As on page no. 19 of complaint)
11.	Possession Clause	Clause 7. DATE OF COMPLETION (a) Time of handing over the Possession <i>(i) The date of completion of the Project shall be Thirty Six (36)</i>

		<p><i>months from the start of construction hereof. Subject to force majeure or/and any other reason beyond the control of Developer, subject to all Allottee(s) having strictly complied with all the terms and conditions of this Buyer's Agreement and being in default under any provisions of the same and all amounts due and payable by the Allottee(s) under this Buyer's Agreement having been paid in time to the Developer. The Developer immediately upon the receipt of OC/CC, shall give notice to the Allottee(s) , in writing, to take possession of the Unit for his/its fit-outs and occupation and use ("Notice of Possession"), on furnishing certain documents by the Allottee(s)</i></p> <p>(ii) <i>The Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of one hundred and Eighty (180) days over and above the period more particularly specified here-in-above in sub-clause(a) (i) of clause 7 , for completion of the Project.</i></p> <p>[Emphasis supplied]</p> <p>(As on page no. 25 of complaint)</p>
12.	Due date of possession	17.11.2016 [Calculated 36 months from date of start of construction-17.05.2013 + 180 days]
13.	Sale consideration	Rs.22,25,960/- (As on page no. 56 of complaint)
14.	Amount paid	Rs.23,78,327/- (As on page no. 57 of complaint)

15.	Occupation certificate	23.07.2018
16.	Offer of possession	28.07.2018 (As on page no. 41 of reply)
17.	Possession letter	22.12.2022 (As on page no. 58 of complaint)
18	Conveyance deed	23.12.2022 (As on page no. 61 of complaint)

B. Facts of the complaint

3. The complainant has made the following submission: -

- I. That the complainant purchased a retail shop no. GF-39, on Ground Floor, having super area 430 Sq. ft. in the commercial project of the respondent named "Paras Square" situated in Sector-63A, Village Behrampur, Gurugram for a total sale consideration of Rs.30,10,000/- and total unit cost of Rs.35,79,610/-.
- II. The respondent executed Builder Buyer's Agreement dated 02.12.2014 in favour of the complainant. The respondent was offering monthly "Payment Plan" in respect of the unit. In this regard, it was agreed between the complainant and the respondent that the complainant is not willing to go with the "Monthly Income Plan" and the respondent would make a "Revised Payment Structure" after decreasing the price of the units, as the complainant gave-up the fixed monthly income plan.
- III. That both the parties agreed for the *Revised Payment Structure* to the tune of Rs.21,90,246/-. At that point of time, the respondent has assured the complainant that an amendment to the builder buyer agreement would also be executed by the respondent in favour of the complainant upon the receipt of Occupation Certificate and before the registration of the Conveyance Deed.

- IV. That the respondent raised the demands as per the revised payment structure and on construction link basis as the unit was under Construction Link Plan. The complainant had paid all his installments in a timely manner as and when demanded by the respondent and a total amount of Rs.23,78,327/- has been paid towards the subject unit.
- V. That as per clause 7(a) (i) of the Builder Buyer Agreement, the respondent was under an obligation to complete the project within a time period 36 months from the start of construction and immediately upon the receiving of occupation certificate will offer possession of the unit to the allottee.
- VI. That the Occupation Certificate of the project was received on July, 2018. However, despite receiving the O.C., the respondent did not offer the possession of the unit to the complainant and withheld the possession of the unit/ shop without any justified reason despite of the fact that the complainant had paid all the installments in a timely manner and there was no due on the part of complainant in respect of the unit.
- VII. That the complainant wanted to enquire about the delay in handing over the possession despite receiving of O.C. upon which the respondent kept on lingering the matter on one pretext or the other and later on the complainant came to know that the respondent has not received completion certificate and that the completion certificate was issued on 24.01.2020.
- VIII. That after several follow ups, the physical possession of the unit was handed over to the complainant on 22.12.2022. That after obtaining physical possession, the conveyance deed was executed between the respondent and the complainant on 23.12.2022 vide vasika bearing no. 18860 at Tehsil Wazirabad, Distt. Gurugram.
- IX. That as per the clause 7(a) (i) of the BBA, the completion date was 36 months from the start date of construction. The construction start date of

the said project was 17.05.2013 which can be ascertained from the Form REP-1 dated 14.01.2020 submitted by the respondent itself with the Authority. Considering the construction start date, the completion date of the project was due on 17.06.2016 and hence, since the physical possession of the unit handed over to the complainant by the respondent on 22.12.2022, therefore, there is a delay of 78 months in handing over the physical possession to the complainant. The respondent has committed grave deficiency in services by not handing over the physical possession of the unit as per the terms and conditions of the Builder Buyer Agreement which amounts to unfair trade practice on account of the respondent. Therefore, the complainant is entitled to the delayed possession charges till handing over of physical possession to the complainant.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

i. Direct the respondent to pay delayed possession charges from the completion date i.e., 17.05.2016 till 22.12.2022 i.e., the date when the physical possession of the unit was handed over to the complainant.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds: -

i. That one of the marquee projects of respondent company is "Paras Square" project, located in Sector 63 A, Village Behrampur, Gurugram Haryana. The complainant approached the respondent, making enquiries about the project, and after thorough due diligence the complainant booked a retail shop in the project.

- II. Consequentially, after fully understanding the various contractual stipulations and payment plans, the complainant executed the Builder Buyer Agreement on 02.12.2014. The complainant was allotted a retail shop bearing no. GF-39, having a super area of 430 sq. ft. (approx.) for a total basic consideration of Rs.35,79,610 /-.
- III. That the time stipulated in respect of completion of construction was 36 months from the start of the construction, subject to the force majeure circumstances and compliance of the terms and conditions of this agreement. On receipt of Occupancy Certificate, the developer shall give notice in writing to take the possession of the unit. The developer shall be entitled for a grace period of 180 days. As per this, the developer has to offer the possession of the unit on or before 02.06.2018.
- IV. The respondent had obtained the Occupancy Certificate of the project on 23.07.2018 and offered the possession of the unit to the complainant on 28.07.2018. The complainant is in possession of the unit and the conveyance deed has been already executed on 23.12.2022. Despite the complainant's allegations, the respondent categorically denies receipt of the said amount of stamp duty paid in respect of the conveyance deed. Furthermore, the respondent has conducted a thorough check of its accounts and has also verified the same with its CRM back-end team, and it has been confirmed that no such payment has been received by the respondent.
- V. That the respondent had endeavoured to deliver the property within the stipulated time. It is pertinent to mention here that due to the orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was / has been stopped for a considerable period day due to high rise in pollution in Delhi NCR. When the parties have contracted and limited their liabilities, they are bound by the same, and relief beyond the

same could not be granted. Further, compounding all these extraneous considerations, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay Orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. It is most respectfully submitted that a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labour is let off and the said travel to their native villages or look for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction in realized after long period of time.

- VI. Unfortunately, the pandemic of Covid 19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR area till July, 2020. In fact, the entire labour force employed by the Respondent were forced to return to their home towns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such the respondent has not been able to employ the requisite labour necessary for completion of its projects. In view of the same, it is most humbly submitted that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the unit.

7. Copies of all the relevant documents have been filed and placed on the 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

8. 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

9. 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

10. 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

11. 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.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to pay delayed possession charges from the completion date i.e.,17.05.2016 till the date the physical possession of the unit was handed over.

12. At the very outset, before dealing with the merits of the case, the Authority has observed that the Buyer's Agreement between the complainant and the respondent was executed on 02.12.2014. As per clause 7 (b) of the agreement, the respondent was to offer the possession of the unit to the allottees by 17.05.2016. The respondent is also entitled to the grace period of 180 days. Thus, the due date comes out to be 17.11.2016.

13. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority has observed that the Buyer's Agreement between the complainant and the respondent was executed on 02.12.2014. According to the terms of this agreement, possession of the unit was to be offered within 36 months from the date of start of construction plus an additional 180 days grace period is allowed to the respondent, in terms of the agreement. Therefore, the due date for possession, considering the grace period was 17.11.2016. The respondent obtained the occupation certificate for the relevant tower on 23.07.2018. An offer of possession was made to the complainant on 28.07.2018, and the unit was formally handed over on 22.12.2022, as indicated

by the possession letter dated 22.12.2022 and the conveyance deed was executed in favour of the respondent on 23.12.2022.

14. 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.
15. 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.
16. In the present matter the cause of action arose on 28.07.2018 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 23.04.2024 which is 5 years 7 months and 5 days from the date of cause of action. The complaint has not been filed within a reasonable period of time nor have the complainant explained any grounds for the delay in filing the same. In view of the above, the Authority is of the

view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.

17. Consequently, the complaint is dismissed being barred by limitation.
18. File be consigned to the registry.

Dated: 12.03.2025


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



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