HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**1453 of 2020**
Date of filing.:	**04.01.2021**
First date of hearing.:	**23.02.2021**
Date of decision.:	**01.07.2025**

1. Chitra Attri
2. Raghav Attri

Both R/o H.no 260, Sector 16, Faridabad ...COMPLAINANTS

VERSUS

M/s BPTP Limited
M-11, Middle Circle, Connaught Circus, New Delhi- 110001 ....RESPONDENT

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

Nadim Akhtar **Member**

Present: - Mr Sanjay Verma, Counsel for the complainant through VC.
Mr. Tejeshwar Singh, Counsel for the respondent through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint has been filed by 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 fulfil 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 complainant, 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 Floors, Sector 77, Faridabad.
2.	Nature of the project.	Group Housing Project
4.	RERA Registered/not registered	Not Registered
5.	Details of unit.	G004, Tower 8, 1414 sq.ft
6.	Date of allotment of unit	16.12.2008
7.	Due date of possession	16.12.2011

8.	Total sale consideration	₹27,45,000/-
10.	Amount paid by complainant	₹ 8,76,400/-
11.	Offer of possession.	None

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the complainants had booked a unit in the project of the respondent namely "Park Floors" situated at Sector 77, Faridabad, Haryana in the year 2008 upon payment of ₹ 2,50,000/- as booking amount. Complainants were allotted unit no. G-004, Tower 8, measuring 1414 sq. ft. Park Floors, Parklands, Faridabad vide allotment letter dated 16.12.2008.

4. At the time of booking, complainants were given assurance that the possession of the unit will be delivered by October 2010, but thereafter on persistent visits and written requests, the respondent gave false assurances and fresh dates of handing over of possession of the unit in question but till date, no progress has been given to the complainant.

5. Complainants have sent various reminder letters to the respondent on 03.06.2011, in January 2012, October 2012 and again in September 2013 as well as personal visits, but till date no response has been received from the complainants. The complainants are residing in a rented accommodation after

paying huge amount of rent for which the complainant is liable to be compensated.

6. That the respondent had arbitrarily cancelled the unit of the complainant vide letter dated 05.07.2013. Complainants approached the office of the respondent company many times but the respondents declined to accede to the requests of the complainant. Complainants gave a written request dated 01.06.2015 to the respondent in this regard but to no avail.

7. Aggrieved by the action of the respondent company, the complainants had filed consumer complaint before the District Consumer Dispute Redressal Forum, Faridabad. However, vide order dated 12.09.2017 the said complaint was dismissed on the grounds of pecuniary jurisdiction.

8. More than 16 years have passed from the date of allotment of the unit in question but the respondent has neither provided possession of the unit nor refunded the deposited amount along with interest. The complainants do not wish to continue with the project and hence, the present complaint seeking refund of paid amount along with interest.

C. RELIEF SOUGHT

9. The complainants in present complaint seek following relief:

(i) Direct the respondent to refund the entire amount i.e.₹ 20,00,000/- lacs paid to the respondent with an interest @24 % per annum from the date of receipt till the date of realization.

(ii) Direct the respondent to pay an amount of ₹ 10,00,000/- as compensation for mental trauma and physical trauma suffered by the complainant due to deficiency in service by the respondent.

(iii) Direct the respondent to pay damage of ₹ 10,00,000/- to the complainant for indulging into unfair trade practice by the respondent.

(iv) Pass such orders as are deemed fit and proper in the facts and circumstances of the present case, in the interest of justice.

10. It is pertinent to mention that vide application dated 12.09.2023 complainant had amended her complaint to amend the prayer clause to seek refund of paid amount of ₹ 8,76,400/- as the paid amount had inadvertently been mentioned as ₹ 20,00,000/-. Hence, the present complaint is being proceeded for relief of refund of paid amount of ₹ 8,76,400/-.

11. During the hearing, learned counsel for the complainants submitted that the complainants in the captioned complaint had booked a unit in the project of the respondent on 27.07.2009. Vide allotment letter dated 16.12.2008 complainants were allotted unit no. G-004, Tower 8 in the project of the respondent. Till 09.01.2009 complainants had paid a total amount of ₹ 8,76,400/- to the respondent in lieu of the booked unit. However, there was no development in construction works at the site of the project due to which the complainants stopped making further

payments. The complainant had time and again approached the respondent seeking possession of the booked unit but received no response. Complainants had earlier filed a complaint before District Consumer Dispute Redressal Forum, Faridabad in the year 2015 but the same was dismissed vide order dated 12.09.2017 on ground of pecuniary jurisdiction. Thereafter, the complainant had approached this Authority seeking redressal of grievances against the respondent. Learned counsel for the complainants again submitted that more than 16 years have passed since the allotment of the unit but the respondent has failed to give possession of the unit and has wrongly retained the amount of ₹ 8,76,400/- paid by the complainant till date. He prayed that direction be given to respondent to refund the paid amount along with interest.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 30.03.2022 pleading therein:

12. That on 27.08.2007 complainants approached the respondent for booking a residential unit in the project of the respondent namely 'Park Floor-II' being developed at Sector 77 Faridabad. Vide allotment letter dated 16.12.2008 complainants were allotted unit no. T8-G004.

13. Thereafter respondent sent the cover letter along with the copies of floor buyer agreement to the complainants , however, they failed to execute

the same. A copy of the unsigned floor buyer agreement dated 18.09.2009 is annexed at page 41 of the complaint. As per clause 1.2 of the agreement the basic sale price of the unit was ₹ 27,45,000/-. It is submitted that the complainants had paid only an amount of ₹ 8,76,400/- to the respondent in lieu of booked unit.

14. The complainants have misrepresented that the possession timeline was October 2010. It is submitted that a builder buyer agreement was not executed between the parties as the complainants themselves failed to do so and at the time of the booking the complainants voluntarily agreed that possession timeline depended on timely payment of each instalment as well as force majeure conditions.

15. The complainants have defaulted in making payment of the instalments as per demands raised by the respondents. Respondent issued various reminder letters despite that the complainants failed to make payment of the outstanding dues, therefore on 05.07.2013, the unit of the complainants was terminated on the ground of non payment as per clause 10 of the booking application form.

16. The complainants are defaulters, the unit allotted to the complainants has already been terminated after forfeiture of earnest money, thus the complainants are not liable to any relief.

17. During the hearing, learned counsel for the respondent submitted that the allotment of the unit in question in favour of the complainants has

already been cancelled by the respondent on 05.03.2017 on account of non payment of demands/instalments. The complainants in this case have made a total payment of ₹ 8,76,400/- against basic sale consideration of ₹ 27,45,000/-. Complainants stopped making further payments after 09.01.2009. Thereafter, respondent issued several demand/reminder letters dated 29.10.2009, 23.12.2009, 25.03.2010, 28.06.2010, 29.11.2010 and 05.04.2011 but the complainants failed to make payment of outstanding balance amount. Thereafter, on 28.05.2011 the respondent issued a final opportunity for payment of outstanding amount but the complainants again failed to make requisite payment. Due to repeated default on the part of the complainants, respondent was constrained to terminate the unit of the complainant vide letter dated 05.07.2013 after forfeiture of earnest money and accumulated interest as per clause 10 of the booking form.

18. Learned counsel for the respondent submitted that the complainants in the captioned complaint have no rights in respect of the unit in question and hence the present relief cannot be allowed.

E. ISSUES FOR ADJUDICATION

19. Whether the complainants are entitled to refund of the amount deposited with the respondent along with interest in terms of Section 18 of Act of 2016?

F. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

20. As per facts and circumstances, complainants in this case had applied for a unit in the project of the respondent namely "Park Floors-II" situated at Sector 77, Faridabad through application form dated 27.07.2008. Vide allotment letter dated 16.12.2008 complainants were allotted unit bearing no, G-004, Tower 8, measuring 1414 sq. ft. promised to be delivered by October 2010. No builder buyer agreement has been executed between the parties in respect of the booked. The complainants have paid an amount of ₹ 8,76,400/- to the respondent in lieu of the booked unit till 09.01.2009. Thereafter, the complainant stopped making further payments as the construction works were not started at the site of the project. It has been alleged by the complainants that the respondent had failed to execute a builder buyer agreement and further failed to develop the project and deliver possession within the promised timeline.

21. With regard to the builder buyer agreement it has been submitted by the respondent that the buyer's agreement was sent to the complainants, for signatures, however, the complainants themselves had failed to execute the buyer's agreement in respect of the unit. Respondent has attached a copy of builder buyer agreement dated 18.09.2009 bearing the name of the complainants in support of its claim. However, complainants have denied having received copy of the said builder buyer agreement. In this regard it

is observed that though the respondent has placed on record a copy of a builder buyer agreement but has failed to file any documentary evidence to show that steps were taken by the respondent to get the said agreement signed/executed by the complainants. The agreement attached by the respondent does not have any stamp of the respondent company and or signatures of the authorised signatory. Further, there is no postal receipt/or receiving on record showing that it was sent to the complainants for signatures. A builder buyer agreement is a sacrosanct document which crystallises the terms of contract between the parties in respect of the booked unit. As soon as a unit is booked in a project, an obligation is cast upon the promoter to execute a buyer's agreement in respect of the said unit as it governs the conduct of both parties till the end. In the present complaint, the respondent had already taken a huge amount of ₹8,76,400/- from the complainants which is more than 30 % of the basic sale consideration of ₹ 27,45,000/- without entering into a builder buyer agreement/agreement of sale. Respondent took no concrete steps to get the builder buyer agreement registered/executed. Thus, respondent cannot be allowed to evade its liability by merely stating that it was the fault of the complainants without placing on record substantial proof that the respondent had tried to get the agreement executed.

22. Now, in the absence of a builder buyer agreement, it cannot be rightly ascertained as to when the possession should have been delivered to the

complainant. In these circumstances, reliance is placed upon the observation of Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. in which it has been observed that period of 3 years is reasonable time to deliver possession of a unit in cases where there is no fixed deemed date of possession. In captioned complaint, complainants had been allotted a unit in the project in question vide allotment letter dated 16.12.2008. Therefore, a period of three years from the said date works out to 16.12.2011. Meaning thereby that the respondent should have delivered possession of the unit to the complainants by 16.12.2011.

23. It is the main contention of the respondent that the allotment of the unit in favour of the complainants stands cancelled as on 05.07.2013 on account of non payment of dues. In this regard it is observed that the complainants in this case had paid an amount of ₹ 8,76,400/- against total sale consideration of ₹ 27,45,000/- in respect of the unit in question. The last payment was made by the complainants on 09.01.2009. Thereafter, respondent had issued several demand letters dated 13.08.2009, 29.10.2009, 23.12.2009, 25.03.2010, 28.06.2010, 29.11.2010, 05.04.2011 and final opportunity letter dated 28.05.2011 to the complainants for making further payment of instalments. However, these demands/instalments had not been paid by the complainants due to which the respondent was constrained to cancel their allotment. It is the

submission of the complainants that they had stopped making further payments since there was no development work at site. It is pertinent to mention that the complainants have failed to attach any documentary proof corroborating their claims. Further, on perusal of the demand letters attached by the respondent, it is revealed that vide demand letter dated 13.08.2009 , the respondent had raised demand "on start of foundation works" meaning thereby that in the month of August 2009, respondent had just started foundation works at the site of the project. The respondent has itself revealed that the construction work had started after nearly months from when the complainants stopped making payments. It is again pertinent to mention that the respondent has not placed on record any photographic/documentary proof showing the stage of construction at the site corresponding the demand letters raised from the complainants. Further, since there was no builder buyer agreement executed between the parties the complainants were left completely unaware with regard to the terms of the contract, schedule of payment and timeline of construction progress at the site of the project. The respondent is merely relying on payment schedule mentioned in the unsigned copy of the builder buyer agreement dated 18.09.2009 whereas said schedule of payment was never conveyed to the complainants, hence never agreed between the parties. Since there is no clear term of payment agreed to between the parties, there is no breach/default on the

part of the complainants. Complainants who had already invested a huge amount of ₹ 8,76,400/- could not have risked further investing their hard earned money after seeing deficiency on the part of the respondent.Thus, the complainants had rightly stopped making payments after 09.01.2009 since there was no development in construction work at the site.

24. With regard to the cancellation of allotment of unit, it is observed that through the final opportunity letter dated 28.05.2011, respondent had called upon the complainants to make payment of ₹ 20,30,816.80/- within 15 days failing which the allotment of the complainants was to be cancelled. However, after the expiry of said 15 days, respondent did not cancel the allotment of the complainants. Rather the respondent issued a cancellation letter to the complainants on 05.07.2013 after a gap of nearly two years. In case the complainants had defaulted in making payment of instalments, the respondent was entitled to cancel the allotment made in favour of the complainants. However, said cancellation should have been immediately affected once the complainants had defaulted in making payments and the amount paid by the complainants should have been returned after deducting earnest money. As per clause 10 of the application for allotment, in case allottee fails to pay the outstanding demand within the due date or time stipulated, respondent can cancel the allotment made in favour of the allottee along with forfeiture of earnest money (25% of the total sale

consideration) and other charges including late payment charges. Whereas in the present complaint, respondent failed to act on the final opportunity letter dated 28.05.2011 and chose to retain the amount paid by the complainants.The respondent wrongfully utilised the amount paid by the complainants and thereafter, issued a letter of cancellation on 05.07.2013. By that time, the amount paid by the complainants was entirely forfeited on account of earnest money and interest on delayed payment which had further been compounded by the respondent @18% from 28.05.2022 till 05.07.2013 thus causing wrongful loss to the complainants.

25. As per observations recorded in paragraph 22 of this order, respondent should have delivered possession of the unit by 16.12.2011. However, instead of delivering possession of the unit, the respondent arbitrarily cancelled the unit of the complainants on 05.07.2013 and also retained the amount paid by the complainants under the garb of earnest money and other charges as per clause 10 of application for allotment. As earlier observed, in case the complainants had defaulted in making payment of the due amount, the respondent should have immediately cancelled the allotment of the complainants and returned the paid amount after deducting earnest money but the respondent malafidely issued a cancellation letter after a gap of two years when the interest on delayed payment had itself risen so that the entire amount paid by the

complainants can be forfeited. Since in the absence of a builder buyer agreement the terms of agreement were not crystallised between the parties, the respondent chose to take advantage of its dominant position and act in an arbitrary and unjust manner to maximise its gains from the complainants.

26. In light of the observations recorded in preceding paragraphs, it is observed that the complainants in the captioned complaint have been grossly wronged by the respondent for more than 15 years. Firstly, the respondent failed to execute a builder buyer agreement with the complainants in respect of the unit in question which would have crystallised the terms of contract and safeguarded the interest of the complainants. Secondly, the respondent delayed the construction of the project and further wrongfully retained the amount paid by the complainants in lieu of booked unit. Now, the complainants are before the Authority seeking relief of refund of paid amount along with interest. Complainants in this case do not wish to continue with the project on account of inordinate delay caused in delivery of possession and unfair trade practices of the respondent.

27. On meticulous examination of the facts , Authority observes that on account of failure on part of respondent in delivery of possession of booked unit within stipulated period and further deficiency on the part of respondent due to unfair trade practices the complainants have acquired

an unqualified right to seek refund of the paid amount along with interest. Therefore, Authority finds it to be a fit case for allowing refund in favour of complainants along with interest on paid amount as per Rule 15 of HRERA Rules 2017 on account of failure on part of the respondent. 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;*

As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 (NCLR) 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"."

28. 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. 01.07.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 11.10%. Accordingly, respondent will be liable to pay the complainant interest from the date the amounts were paid by him till the actual realization of the amount.

29. Hence, Authority directs respondent to refund to the complainants the paid amount along with interest 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 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount.

30. In the captioned complaint, complainants have claimed to have paid an amount of ₹ 8,76,400/- whereas as per the receipts annexed the paid

amount is ₹ 5,00,000/-. The complainant had paid the remaining amount of ₹ 3,76,000/- cheque dated 09.01.2009 bearing no. 929468 however, receipt for said payment is unavailable. During the course of hearing dated learned counsel for the respondent had admitted that the respondent has received an amount of ₹ 8,76,400/- from the complainants. Therefore, the interest payable to the complainants is being calculated on the total paid amount of ₹ 8,76,400/- .Authority has got calculated the interest payable to the complainant from date of payments till date of order(i.e 01.07.2025) and same is depicted in the table below:

Sr. No.	**Principal Amount (in ₹)**	**Date of payment**	**Interest Accrued till date of order i.e 01.07.2025 (in ₹)**
1.	2,50,000/-	29.07.2008	4,70,001/-
2.	2,50,000/-	15.10.2008	4,64,071/-
3.	3,76,400/-	09.01.2009	6,61,962/-
Total:	8,76,400/-		15,96,034/-

31. Complainants in the captioned complaint are seeking payment of ₹ 10,00,000/- as compensation for mental trauma and physical trauma and compensation of ₹ 10,00,000/- for indulging into unfair trade practice on. 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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

G. 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) Respondent is directed to refund the entire amount along with interest of @ 11.10% ₹ 24,72,434/- to the complainant as specified in para 30 of this order. Interest shall be paid up till the time period under section 2(za) i.e till actual realization of amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real

Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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

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CHANDER SHEKHAR
[MEMBER]

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DR. GEETA RATHEE SINGH
[MEMBER]