

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

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| Complaint no. : | 645 of 2024 |
| Date of filling of complaint: | 27.02.2024 |
| Order pronounced on: | 25.07.2025 |

Anjali Kakar

Address: -E-28B, Rajouri Garden, West Delhi**Complainant**

Versus

M/s BPTP Limited

Address: - M-11, Middle Circle, Connaught Circus, New
Delhi-110001**Respondent****CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Complainant in person

Complainant

Shri Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint dated 27.02.2024 has been filed by the complainant 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. Project and unit 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 tabular form:

| S.N. | Particulars | Details |
|------|---|--|
| 1. | Name of the project | "Terra", Sector- 37-D, Gurugram |
| 2. | Nature of project | Group Housing Towers |
| 3. | RERA registered/not registered | Registered 299 of 2017 dated 13.10.2017 |
| 4. | DTPC License no. | 83 of 2008 dated 05.04.2008 94 of 2011 dated 24.10.2011 |
| 5. | Validity status | 04.04.2025 23.10.2019 |
| 6. | Licensed area | 23.18 acres |
| 7. | Allotment Letter | 11.04.2022 (as per page no. 65 of complaint) |
| 8. | Unit no. | T-23-1402, Tower 23 [As per page no. 65 of complaint] |
| 9. | Unit measuring | 1811 sq. ft. [As per page no. 65 of complaint] |
| 10. | Date of execution of Flat buyer's agreement | 29.07.2022 (As per page no. 75 of complaint) |
| 11. | Date of building plan | 21.09.2012 |
| 12. | Possession clause | 11. Possession 11.1. Schedule for possession of the said Apartment. The Promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee and the Common Areas to the association of allottees or the competent authority, as the case may be, provided under Rule 2(1)(f) of the Rules, is the essence of the Agreement. The Promoter |





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| | | assures to hand over possession of the Apartment as per the timelines mentioned in the table below unless there is delay or failure due to "force majeure", court orders, Government policy/guidelines, decisions affecting the regular development of the Project. If, the completion of the Project is delayed due to the above-mentioned conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment (WITHIN 90 DAYS OF BOOKING) |
| 13. | Due date of possession | 11.07.2022 (as per possession clause) |
| 14. | Payment Plan | At the time of booking 10% OF TP |
| | | Within 30 days 10% of TP |
| | | On application of OC or 4 months from the date of booking whichever is later 50% OF TP |
| | | On receipt of OC 25% of TP |
| 15. | Total Sale Price | Rs. 1,36,27,775/- [as per page no. 95 of complaint] |
| 16. | Total amount paid by the complainant | Rs. 27,25,555/- (as alleged by the complainant) |
| 17. | Application for occupation certificate | 16.01.2021 (page 118 of reply) |
| 18. | Occupation certificate | 21.09.2023(in principle) [Page no. 124 of the reply] |

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| 19. | Offer of possession | Not offered |
| 20. | Demand letters sent to the complainant for payment | 04.05.2022, 10.08.2022, 16.05.2023, 23.09.2023, 04.08.2023, 05.06.2023, 05.07.2023, 06.09.2023 |
| 21. | Termination letter | 07.10.2023 (page 116 of reply) |

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That the complainant applied for the said flat/unit with the respondents vide application form along with necessary documents. At the time of submitting the application form, the respondents allotted a flat/unit bearing no. T23-1402-14th floor, admeasuring 996.130 Sq. feet.
 - That on 26/04/2022 first payment of Rs. 13,12,775/- was made vide receipt no. 2022/140000026 received by the respondent. On 29/04/2022 second payment of Rs. 50,000/- was received by the respondent. On 11/05/2022 third payment of Rs. 13,62,780/-, totaling to another 10% of the total sales consideration, was made vide receipt no. 2022/1400000691 and was duly received by the respondent. Total amount paid to BPTP is Rs. 27,25,555/- which equals to 20% of the total sales consideration.
 - That on 29/07/2022 the builder buyer agreement was signed between the complainant and the respondent. That the terms of possession of the said apartment have been mentioned to be 90 days within the date of booking i.e. 90 days from 26/04/2022 which comes out to be 25/07/2022 but the project was far from completion till that time.



- iv. The respondent had to raise a demand of 50% total sales consideration after the 'application of OC', which must be applied after the project is in a habitable condition and complete in all aspects. On 10/08/2022, a wrongful demand of 50% of the total sales consideration - Rs. 6813887/- was raised by the respondent.
- v. That the complainant repeatedly raised concerns and demanded concrete evidence for the same. The complainant also pointed out to the respondent via email dated 23/08/2022 that according to the builder buyer agreement, an in-principle approval for the grant of the occupation certificate is inconsequential to the terms of the agreement and therefore, the demand raised wasn't legitimate. It took multiple emails and calls from the complainant demanding evidence and raising queries, for the respondent to accept that the demand was wrongly raised.
- vi. On 06/09/2023, the respondent gave a notice of 30 days to pay 50% of the total sales consideration else the allotment would be terminated, again without shedding light on the delay in possession/construction, the proof of application of the occupancy certificate or the pending damages which they are liable to pay as well.
- vii. On 23/09/2023, the respondent yet again raised another payment demand for 25% of the total sales consideration and the respondent claimed that the milestone of "on receipt of OC" has been achieved. The respondent claimed that the occupancy certificate had been attained and based on which, expected the complainant to pay Rs. 34,06,943.75/- in addition to 50% of the total sales consideration.
- viii. On 07/10/2023, a termination letter was received on the complainant's end stating that the respondent had cancelled the

allotment without responding after receiving the complainant's legal response to their said demand.

- ix. The respondent consistently exhibits a troubling pattern of making illegitimate demands without meeting construction milestones. Furthermore, the respondent has been deceiving the complainant by presenting fraudulent evidence to falsely indicate milestone achievement. This pattern of behaviour raises serious concerns about the respondent's integrity and calls for immediate action to rectify the situation.

C. The complainant is seeking the following relief:

4. The complainant has sought following relief(s):
- Direct the respondent to pay delay interest on the paid amount.
 - Direct the respondent to revoke the termination letter.
 - Direct the respondent to withdraw the demand raised and refrain from raising fresh demands.

D. Reply filed by the respondents.

5. The respondents have contested the complaint on the following grounds:
- That the complainant being interested in the group housing real estate development of the respondent, known under the name and style of "TERRA" located at sector 37-D, Gurugram, Haryana booked a unit in the said project. At the very outset, it is pertinent to mention that the project has all the necessary approvals and permissions. It was granted license no. 83 of 2008 and 94 of 2011 from Director, Town and Country Planning, Haryana and is also registered with the Hon'ble Authority vide registration no. 299 of 2017 dated 13.10.2017.
 - That the complainant booked a unit vide an application form and subsequent to such booking, a unit bearing number T23-1402, tower 23,



tentatively admeasuring 1811 sq. ft. was allotted to the complainant vide allotment letter dated 11.04.2022.

- iii. It is submitted that prior to approaching the respondent, the complainant had conducted extensive and independent inquiries with regards to the project and only after being completely satisfied with regards to all aspects of the project, the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.
- iv. That the complainant consciously and wilfully opted for time linked payment plan as per their choice for remittance of the sale consideration for the unit in question and the respondent had no reason to suspect *bonafide* of the complainant.
- v. That after the allotment of the unit in favour of the complainant, a builder buyer agreement dated 29.07.2022 was duly executed between the parties. it is imperative to mention here that the complainant, after being fully satisfied and agreeing with the terms and conditions of the agreement, voluntarily and wilfully entered into the same.
- vi. That after the execution of the agreement, the parties are bound by the contractual terms of the same and hence, the relationship between the parties including but not limited to the rights and obligations of the parties are governed by the afore-mentioned agreement. Hence, the complainant agreed to be bound by the terms and conditions of the agreement. Moreover, the amount payable to the respondent was agreed upon by the parties via the said agreement and mutual understanding between the parties.
- vii. That as per clause 11 of the agreement dated 29.07.2022, the due date of offer of possession was within a period of 90 days from the date of



booking, subject however, to the *force majeure* circumstances, the 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.

- viii. Hence, as noted above, the respondent, in the present matter is also entitled to a grace period of 6 months. Thereafter, the proposed due date of offer of possession of the unit after including a grace period of 6 months comes out to be 10.01.2023
- ix. It is imperative to note at this stage that the due date of delivery of the unit was subjective in nature and was dependent upon the purchaser/allottee complying with all the terms and conditions of the agreement along with timely payments of instalments of sale consideration.
- x. It needs to be seen that the development of the unit and the project as a whole is largely dependent on the fulfilment of timely clearing their dues by the allottees. That the due date of offer of possession was also dependent on the timely payment by the complainant, which, the complainant failed to do. That failure of the complainant in remitting the outstanding dues as per the payment plan resulted in the issuance of various demands and reminder letters by the respondent in favour of the complainant however, despite the same, the complainant have delayed the payment against the unit.
- xi. 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 6 of the agreement. That in case of default by the complainant, the complainant bound to make the payment of interest.
- xii. It is submitted that various demand letters were raised as per the agreed payment plan adopted by the complainant however, the complainant had continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were also served to the complainant from time to time.
- xiii. At this stage, it is imperative to note that the complainant is wrongly challenging the demand letter dated 10.08.2022. That was evident from above, the 3rd instalment was to be made at "application for OC or 4 months from booking, whichever is later". That while the application for the grant of occupation certificate was already made on 16.01.2021, however, 4 months from booking (26.04.2022) expire on 26.08.2022. That the respondent had inadvertently sent the demand letter dated 10.08.2022. Such error was duly noted by the respondent and thereafter, an email dated 26.08.2022 was sent to the complainant wherein the said demand letter dated 10.08.2022 was recalled. That the demand was issued afresh after reaching the milestone for booking.
- xiv. That upon the non-payment by the complainant, the complainant was considered under default, and upon the failure of the complainants to rectify their default, the respondent was left with no other option but to terminate the unit of the complainant.
- xv. That multiple opportunities were given to the complainant to rectify their default through the reminder notices and final demand notice for payment of outstanding amount, however, the complainant again willingly and voluntarily chose to not rectify the same, and consequently, after waiting for an ample period of time, the respondent



was constrained to terminate the allotment of the unit of the complainant by issuing the termination letter dated 07.10.2023.

- xvi. That accordingly, after termination of the allotment of the unit of the complainant, the complainant was left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the complainant, solely due to the default of the complainant, the respondent is well within their right to forfeit the earnest amount along the delayed payment interest till the date of termination and other non-refundable amount including brokerage charges, processing fees, any monetary benefit given to the purchaser and the statutory dues paid against the unit.
 - xvii. That even after such bonafide and generous conduct of the respondent, the complainant failed to abide by the terms and condition of the agreement till date and remit the outstanding dues.
 - xviii. That the respondent, even after facing various difficulties had completed the project timely and had successfully applied for the grant of the occupation certificate dated 16.01.2021 and hence received the in-principle occupation certificate on 21.09.2021.
 - xix. That the complainant has wrongly challenged the occupation certificate of the tower in question, and such submissions need to be dismissed at the very outset.
 - xx. Hence, all the claims put forth by the complainant in the present complaint are wrong and frivolous. That, it was the complainant who failed to remit the outstanding dues and abide by the terms and conditions of the agreement.
6. 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

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, Haryana 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act 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) The promoter shall-

(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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act of 2016 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 respondents:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

11. The respondent raised the contention that the construction of the project was delayed due to force majeure conditions such as the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.
12. 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. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I. As 3696-3697/2020 dated 29.05.2020 has observed that:**

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 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 a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."
13. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 11.07.2022 and the builder buyer's agreement was executed between the parties on 29.07.2022 and the respondent are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the date of builder buyer agreement was after the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract as the relationship between the allottee and the promoter has been created after the

outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delay interest on the paid amount.

G.II Direct the respondent to revoke the termination letter.

G.III Direct the respondent to withdraw the demand raised and refrain from raising fresh demands.

14. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
15. In the present complaint, the complainant was allotted a plot bearing T-23-1402 admeasuring 1811 sq. yds. vide allotment letter dated 11.04.2022, under construction linked payment plan, for the sale consideration of Rs.1,36,27,775/-. Thereafter, a builder buyer agreement was executed between the complainant-allottee and the respondent-promoter on 29.07.2022.
16. The complainant-allottee have paid a total amount of Rs.27,25,555/- against the sale consideration of Rs.1,36,27,775/-, which is 20% of the entire sale consideration. The plea of the complainant is that the plot of the complainant was cancelled by the respondent vide termination letter dated 07.10.2023 on account failure of the complainant to make payment of the outstanding dues.
17. Herein, the complainant intends to continue with the project and are seeking quashing of notice for termination dated 07.10.2023. The Authority has gone through the payment plan which was duly agreed between the parties and the same is reproduced below for ready reference:

ANNEXURE D: Payment Plan

| Instalment | Percentage of total sale consideration |
|------------------------|--|
| At the time of booking | 10% OF TP |
| Within 30 days | 10% OF TP |



| | |
|--|-----------|
| On application of OC or 4 months from the date of booking whichever is later | 50% OF TP |
| On receipt of OC | 25% OF TP |

15. It is matter of record that the complainant booked the aforesaid plot under the above-mentioned payment plan and paid an amount of Rs.27,25,555/- towards total consideration of Rs.1,36,27,775/-. The complainant has submitted that as per payment plan agreed between the parties vide buyer's agreement dated 29.07.2022, the complainant was obliged to make payments as per the payment plan and the same were not paid by him. That while the first application for the grant of occupation certificate was already made on 16.01.2021, however, the respondent again made the application of an occupation certificate on 28.10.2022 and after that on 16.05.2023, the respondent made a first demand of Rs.68,13,888/- on achieving the milestone "on application of OC". Thereafter, several reminders were issued to the complainant on 05.06.2023, 05.07.2023, 04.08.2023 however the complainant failed to make the payment of outstanding dues. Therefore, the respondent have submitted that they have raised all the demands as per the payment plan, but the complainant had miserably failed in making the complete payment, upon which, the respondent had issued three reminders, and upon the continuous non-compliance on part of the complainant, a last and final opportunity letter was issued by the respondent on 06.09.2023 which categorically noted that upon the non-payment by the complainant, the complainant will have noted to have waived his allotment. Upon the continuous act of non-payment, the unit was terminated on 07.10.2023. Now, the question before the Authority is whether the cancellation made by the respondent is valid or not.
16. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that as per the payment

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plan agreed between the parties, the complainant was obliged to make payments on time. It is notable that the respondent has sent several reminders on 05.06.2023, 05.07.2023, 04.08.2023 for the payment as agreed between the parties, before issuing a final demand notice dated 06.09.2023 giving last and final opportunity to the complainant to comply with its obligation to make payment of the amount due, but the same having no positive results and ultimately leading to cancellation of unit vide termination letter dated 07.10.2023. Further, Section 19(6) of the Act of 2016 casts an obligation on the allottees to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 29.07.2022 is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money. However, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of ***Maula Bux VS. Union of India, (1970) 1 SCR 928*** and ***Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in ***CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) and followed in ***CC/2766/2017*** in case titled as ***Jayant Singhal and Anr. VS. M3M India***

Limited decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

"5. AMOUNT OF EARNEST MONEY

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money **shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be** in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

17. Keeping in view the aforesaid factual and legal provisions, the respondents/promoter is directed to refund the paid-up amount of Rs.27,25,555/- after deducting 10% of the basic sale consideration of Rs.1,36,27,775/- being earnest money along with an interest @10.90% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 07.10.2023 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- I. The respondents/promoter is directed to refund the paid-up amount of Rs. 27,25,555/- after deducting 10% of the sale consideration of Rs. 1,36,27,775/- being earnest money along with an interest @10.90% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 07.10.2023 till its realization.
- II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
19. Complaint as well as applications, if any stands disposed of accordingly.
20. File be consigned to registry.

Dated: 25.07.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory
Authority, Gurugram