

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

Complaint no. : 3761 of 2024
Date of complaint : 05.08.2024
Date of order : 01.07.2025

Sanjay Saxena & Deepika Saxena

R/o: - 304, Meadows 1, Grande Exotica, Bicholi
Mardana, Indore-452016

Complainants

Versus

M/s BPTP Limited

Having Office at: -OT-14, 3rd Floor, Next Door,
Parklands, Sector-76, Faridabad, Haryana-121004

Respondent

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member**

APPEARANCE:

Vishal Dhaka (Advocate)
Harshit Batra (Advocate)

Complainant
Respondent

ORDER

1. This 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.	Heads	
1.	Project name and location	'Pedestal', Sector 70 A, Gurugram, Haryana.
2.	Nature of the project	Residential township
3.	a) DTCP license no	15 of 2011 dated 07.03.2011
	b) License valid up to	06.03.2024
	c) Name of the licensee	Impartial Builders Developers Pvt Ltd and Others
	d) area	102.2 acre
4.	a) RERA registered/not registered	Not Registered
5.	Unit no.	B-95-SF 2 nd (page no. 18 of complaint)
6.	Unit admeasuring	1823 sq. ft. (page no. 18 of complaint)
7.	Allotment Letter	21.11.2013 (page no. 18 of complaint)
8.	Date of execution of the flat buyer's agreement	16.12.2013 (page no. 20 of complaint)
9.	Total consideration	Rs. 1,62,20,707/- (page no. 19 of complaint)
10.	Total amount paid by the complainant	Rs.1,54,06,291/- [Rs. 50,58,063 /- paid by complainant + Rs.1,03,48,228/- paid by HDFC] (Page no. 49 of the complaint)
11.	Possession clause	"Clause 5.1- The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be

		<p>additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.</p> <p>Clause 1.4 "Commitment Period" shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 36 months from the date of execution of Floor Buyers Agreement"</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(Page no. 27 & 33 of complaint)</p>
12.	Due date of delivery of possession	16.12.2016 (36 months) (Calculated from the date of execution of agreement as being later)
13.	Occupation certificate	19.02.2024 (on page no. 142 of reply)
14.	Offer of possession	11.04.2024 (on page no. 47 of complaint)
15.	Grace period utilization	Grace period is not allowed in the present complaint.

B. Facts of the complaint

3. The complainant has made the following submissions: -

- a. That the complainants had shown an interest in booking a floor in respondent's project PEDESTAL@70A in Sector - 70 & 70A, Gurgaon Haryana.
- b. That a Floor (B-95-SF) was allotted to the complainants measuring to 1,823.00 sq. ft. at a selling price of Rs. 14,858,606.00/- and a net cost of the unit was Rs. 16,220,707.00/- as per the allotment letter and



payment schedule issued by respondent on 21.11.2013. As per the BBA, possession of the unit was supposed to handed over to complainants within a period of 42 months from 16.12.2013 including the grace period.

- c. That as per the BBA, in case of delayed possession the respondent were to award compensation to the complainants @ Rs. 10 per sq. ft. per month of the super built-up area of the unit for the first (6) six months of delay, then @ Rs. 20 per sq. ft. per month of the super built-up area of the unit for the next (6) months of delay and subsequently @ Rs. 30 per sq. ft. per month of the super built-up area of the unit for beyond first 12 months, amounting to Rs.42,73,500/- as per the built-up area of 1925 Sq. Ft. as mentioned in the offer of possession dated 11.04.2024 sent by the respondent to the complainants, which is yet to be paid to the complainants.
- d. That as per the offer of possession letter the respondent has demanded an amount of Rs. 19,25,573.59/- as the full and final payment to be made by the complainants which is ambiguous and unaccounted.
- e. That the respondent entered into a Tripartite Agreement with the complainants and the third-party being Housing Development Finance Corporation Limited (HDFC Bank) on 14.12.2013. As per Tripartite Agreement the complainants had got a loan sanctioned for Rs.1,18,00,000/- for the allotted floor (B-95-SF) from HDFC Bank which was disbursed to respondent in total over a period of time as per respondent's demands related construction linked plan. The complainants and respondent had an arrangement that until the possession of the unit is handed over to the complainants, the respondent will be liable to pay the Pre-Emi charges to the bank.

- f. That initially the respondent paid the Pre-Emi charges to HDFC Bank. However, in the month of January 2017 the complainants started to pay the Pre-Emi charges to the lender on a monthly basis as requested by the respondent and promised that the respondent will pay an accumulative amount to the complainants on a yearly basis and even made a payment of Rs. 12,88,588/- discharging their liability till April 2019 towards the complainants against the Pre-Emi charges paid by them.
- g. That since 2019 the complainants have not received any payment against the Pre-Emi charges paid by them which amounts to Rs. 52,67,940/- which is payable by the respondent with an annual interest rate of 18% per annum amounting to Rs. 65,33,557/-.
- h. That in total the respondent owes Rs. 42,73,500/- for delayed possession and Rs. 52,67,940/- at annual interest rate of 18% amounting to Rs. 65,33,557/- towards Pre-Emi charges to the complainants. The complainants have been following up via e-mails regularly seeking details of the amount owed by the respondent to them, but have not received formal communication till date.
- i. That as per the offer of possession letter, respondent have accrued an interest charge of Rs. 52,226/- which should be not charged as it is unaccounted. The complainants sent a legal demand notice to the respondent on 16.05.2024 asking the respondent to discharge their liability towards the complainants, but no response was received from the respondent for or again legal demand notice.
- j. That the cause of action for purpose of filing the present complaint first arose after April 2019, when the respondent did not pay the Pre-Emi charges the complainant. Further arose when the respondent sent the offer of possession and demanded Rs. 19,25,573.59/- and also the

terms and conditions mentioned in the offer of possession were against the natural justice and were unlawful.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Stay should be granted on the terms and conditions mentioned in the offer of possession.
- ii. Possession of the unit should be given to the complainants.
- iii. Direct the respondent to discharge their legal liabilities towards the complainants and pay them a sum of Rs. 42,73,500/- for delayed possession and Rs. 52,67,940/- at annual interest rate of 18% amounting to Rs. 65,33,557/- towards Pre-Emi charges.
- iv. Direct the respondent to waive of interest charges of Rs.52,226/- as mentioned in offer of possession letter.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:

- a. That the complainants being interested in the real estate development of respondent and booked a unit in the project after conducting their due diligence. The Project has all the necessary approvals and permissions. It was granted the license no. 15 of 2011 from Director, Town and Country Planning, Haryana (DTCP).
- b. That pursuant thereof, a floor bearing number B-95-SF, in Block B, tentatively admeasuring 1,823 sq. Ft. was allotted to the complainants vide allotment letter dated 21.11.2013. That prior to approaching respondent, the complainants had conducted extensive and independent inquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by the respondent.

- c. That consequently, BBA dated 16.12.2013 was executed between the complainants and respondent. The agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties. 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.
- d. That the agreement categorically mentions that the area of the unit of the complainants was tentative and subject to change till offer of the possession of the unit. The complainants had also executed an undertaking and affidavit in this regard.
- e. That the complainants availed a home loan against the unit for which the permission to mortgage was issued by respondent on 26.12.2013 and thereafter the parties entered into a tripartite agreement dated 14.12.2013. As per clause 3 of the TPA, respondent was only obligated to make payment of the Pre-Emi to the Bank from the date of first disbursement till 30.11.2015 and the respondent in their *bonafide* has made payment of Rs. 24, 31.504 under the subvention scheme, in the following manner:-

PARTICULAR	AMOUNT
Interest deducted by the bank under subvention scheme, from its first disbursement	7,30,216
Pre-Emi Paid	11,25,362
Pre-EMI Adjusted in Demand	5,75,926
Total Subvention Paid	24,31,504

- f. That the arrangement between the parties is derived from the conditions of the tripartite agreement. Furthermore, the respondent **proposed** to offer the possession of the unit, as per clause 5.1 r/w 1.4 of the agreement which comes out to be 16.06.2017, however the same was subject to the clause 10 r/w 1.14 (*force majeure*) and strict adherence to the terms and conditions of the agreement by complainants/allottees. The construction of the unit was hampered due to and was subject to the happening of the *force majeure* and other circumstances beyond the control of the company, the benefit of which is bound to be given to the respondent in accordance with clause 10.1 r/w 1.14 of the agreement.
- g. That the respondent was faced with certain *force majeure* events including but not limited to the non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. The respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the complainant as per clause 10.1 r/w 1.14 of the agreement, however, despite all the hardships faced by respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities.
- h. That the development of the unit and the project as a whole is largely dependent on the fulfilment of the obligation of the allottees in timely clearing their dues. The due date of the offer of possession was also dependent on the timely payment by the complainants, which, the complainants failed to do. The demands were raised as per the agreed



payment plan however, despite the same, the complainants had delayed the payment against the unit.

- i. That the respondent received the Occupation Certificate in respect of the said unit on 19.02.2024. Once an application for the grant of an Occupation Certificate is submitted for approval in the office of the concerned statutory authority, respondent cease to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. Therefore, the time period utilized by the statutory authority to grant an occupation certificate to the respondent is necessarily required to be excluded from the computation of the time period utilized for the implementation and development of the project.
- j. That even after the defaults of the complainants, respondent completed the construction of the unit and offered the possession of the unit to the complainants on 11.04.2024 and earnestly requested the complainant to take possession of the unit after remittance of the balance sales consideration of the unit. However, the complainants had failed to take possession of the unit. The respondent being a customer-centric company has also waived off the interest on delayed payment amounting to Rs. 75,727/-. The total amount payable by the complainants on the offer of possession of the unit was Rs.32,45,563.49 (excluding the stamp duty charges), Additionally, the respondent had credited an amount of Rs.30,21,277.90/- to the complainants as delayed compensation.
- k. That prior to the offer of possession, a total sum of Rs.24,31,504/- was already paid to the complainant, as Pre-EMI. That from the delayed compensation payable by the respondent, the said amount of Pre-EMI

has been duly adjusted. The net benefit credited to the complainant comes out to Rs. 13,19,989.90/- and the net payable by the complainants is Rs. 19,25,573/-.

- l. That multiple reminders for the handover of possession have been made by the respondent to the complainants, however, the complainants had failed to come forward and take possession of the unit. The respondent had sent reminders dated 14.08.2024 and 24.09.2024. However, the complainants did not pay any heed to the legitimate, just, and fair requests of the respondent. All requests of the respondent to take possession of the unit fell on deaf ears of the complainant. The complainants have failed to till date make payment of the balance sales consideration of the unit and take possession of the unit.
- m. That the complainants were offered possession on 11.04.2024 and was also requested to take possession and make the outstanding payment as per the agreed terms and conditions of the agreement. Hence, the present complaint is liable to be dismissed.
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

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

7. 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

8. 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) 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.

9. 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 objections raised by the respondent.

F.I Objections regarding force majeure.

10. The respondents/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, default by allottees in

making timely payments, various orders passed by NGT, major spread of Covid-19 across worldwide, etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 16.12.2016. Moreover, time taken in governmental clearances cannot be attributed as reason for delay in project. Further, the events alleged by the respondents do not have any impact on the project being developed by the respondents. Furthermore, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the respondents/promoter cannot be granted any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent discharge their legal liabilities towards the complainants and pay them delayed possession Charges and Pre-Emi.

G.II Direct the respondent to handover possession, waive of interest charges of Rs.52,226/- and stay on the terms and condition mentioned in offer of possession.

11. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under:

"Section 18: - Return of amount and compensation

(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

*.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed".*

12. The flat buyer's agreement was executed between the parties. As per clause 5.1 & 1.4 of the agreement, the possession was to be handed over



within a period of 36 months from the date of execution of agreement.

The clause 5.1 & 1.4 of the buyer's agreement is reproduced below:

***"Clause 5.1-** The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.*

***Clause 1.4** "Commitment Period" shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 36 months from the date of execution of Floor Buyers Agreement"*

(Emphasis supplied)

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant

for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

"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 (MCLR) 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."

15. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the 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 marginal cost of lending rate +2% i.e., **11.10%**.
17. The definition of term 'interest' as defined under section 2(z) of the Act provides that 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. The relevant section is reproduced below:
- “(z) "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;”*
18. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 & 1.4 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 month from the date of execution of agreement i.e., by 16.12.2016.
19. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over



the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid if any, from the due date of possession i.e., 16.12.2016 till offer of possession i.e. 11.04.2024 plus two months or actual handing over of possession whichever is earlier at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

20. Further the complainant opted for subvention scheme, the respondent-promoter has agreed to bear Pre-EMI interest on disbursement/loan amount by the bank. The respondent paid an amount of Rs. 24,31,504/- as per mandate Tripartite agreement dated 14.12.2013 and has also offered possession to the complainant on 11.04.2024 and also credited an amount of Rs.30,21,277/- on account of delay penalty compensation.

H. Directions of the Authority

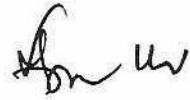
21. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay delayed possession charges on the amount paid by the complainant to it after adjusting amount already paid towards Pre-EMI/delay compensation, from the due date of possession i.e., 16.12.2016 till offer of possession i.e. 11.04.2024 plus two months or actual handing over of possession, whichever is earlier at the prescribed rate of interest



i.e., 11.10% p.a. for every month of delay as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The arrears of such interest accrued from due date of possession till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this as per rule 16(2) of the rules.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed.
22. Complaint stands disposed of.
23. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.07.2025