

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

Complaint no. : 1437 of 2024
Date of decision : 08.07.2025

Ranjit Bhatia & Neenu Bhatia
R/o: -S-96, Panchsheel Park, Malviya Nagar S.O, South
Delhi, Delhi-110017

Complainants**Versus**

M/s Bestech India Private Limited
Regd. Office at: Office No. 5D, 5th Floor, Aria Signature
Office, JW Marriott Hotel Delhi Aerocity Hospitality
District, Near IGI Airport, New Delhi - 110037

Respondent**CORAM:**

Shri Arun Kumar
Shri Ashok Sangwan

**Chairman
Member****APPEARANCE:**

Sh. Sambit Nanda (Advocate)
Sh. Ishaan Dang (Advocate)

**Complainant
Respondent****ORDER**

1. The present complaint dated 15.04.2024 has been filed by the complainant/allottees 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 proviso of the Act or the Rules and regulations made there under or to the allottees 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 complainants, 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 and location of the project	Orient – Bestech Business Towers at village Khandsa NH-8 Gurgaon
2.	RERA Registration	Not registered
3.	Unit no.	IT cyber space 8 th floor, 822 [pg. 30 of complaint]
4.	Unit area admeasuring (Super area)	5000 sq. ft. [super area] [pg. 30 of complaint]
5.	Allotment Letter	21.03.2007 [pg. 57 of complaint]
6.	Date of buyer's agreement	03.03.2009 [page 27 of complaint]
7.	Possession Clause	14. POSSESSION <i>That subject to the provisions of clause 15 and 16 the possession of the said unit to be delivered by the developer to allottee within 24 months from the date of this agreement.</i> (page 35 of complaint)

8.	Due date of possession	03.03.2011 [calculated from the date of agreement]
9.	Total sale consideration	Rs. 90,25,000/- (As per the BBA at page 30 of complaint)
10.	Amount paid by the complainant	Rs. 98,89,754/-
11.	Occupation certificate	08.05.2013 [pg. 35 of reply]
12.	Offer of possession	01.07.2013 (page no. 90-92 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- a. That on 21.03.2007 the complainants applied for a unit admeasuring 5000 sq. ft. in the project and paid a sum of Rs.8,50,000/- vide cheque bearing No.581881 dated 19.03.2007. The respondent duly issued an allotment letter in favour of the complainants on the same date.
- b. That builder buyer agreement was executed on 03.03.2009 between the respondent and the complainants for unit no.82 on the 8th floor of the project having area of 5000 sq. ft.. In terms of clause 14 of the BBA, the possession was to be delivered within 24 months from the date of the agreement i.e. 03.03.2011. The total sale consideration as per the BBA was Rs. 1,12,75,000/- and complainant opted for construction linked payment plan.
- c. That till 2013, the complainants duly made payments in terms of the BBA as and when demands were raised by the respondent. On

01.07.2013, the respondents sent a notice to the complainants claiming that occupancy certificate had been issued by the Directorate Town and Country Planning Haryana (DTCP) on 08.05.2013. Further, the respondent called upon the complainants to make deposit the balance sum of Rs.13,76,080/- along with maintenance security deposit of Rs.7,50,000/- and advance maintenance charges of Rs.2,20,248/- in favour of the Maintenance Agency nominated by the respondent i.e. 'Park View Facilities Pvt. Ltd. The total sum demanded by the respondent was Rs.23,28,328/- . The respondent neither offered possession of the premises nor provided any date or timeline for execution of a conveyance deed in favour of the complainants.

- d. That the respondents had no right to claim maintenance charges or maintenance security deposit without even offering possession, believing the respondent's representation that the unit would be leased out very soon and conveyance deed would be executed in favour of the complainants on 18.07.2013, the Complainants duly paid a sum of Rs.23,28,328/-. The said amount was paid after a waiver of a sum of Rs.4,562/- which had been wrongly charged as interest on delayed payments. Thus, as on 18.07.2013 the complainants had duly paid the entire consideration along with advance maintenance charges and maintenance security deposit for the transfer of the subject unit in favour of the complainants.

- e. That despite the payment of the entire sale consideration the respondent neither offered possession of the subject unit nor leased out the subject unit in terms of the BBA.
- f. That on 12.04.2017 the respondent sent a notice to the complainant claiming for a sum of Rs.1,15,988/- was payable towards Value Added Tax.
- g. That despite patiently waiting for over 10 years for possession of the unit and also having paid the entire sale consideration, there was absolutely no communication from the respondent either regarding possession of the unit or regarding lease of the unit. Instead of offering possession of the unit or granting compensation to the complainants for the delay, the respondent and its maintenance agency began demanding maintenance charges from 01.04.2017. There was no maintenance agreement executed between the complainants and the maintenance agency. The respondent had a unilateral arrangement with the maintenance agency, which was its own subsidiary. On 01.05.2017 the complainants received an absolutely illegal demand for a sum of Rs.19,38,731/-. This was first such demand raised by the respondent or the maintenance agency since 2013.
- h. That the complainants, on 11.07.2017, issued a legal notice to the respondent and the maintenance agency denying their liability to pay any maintenance charges and further called upon the respondent to handover peaceful possession of the unit along with

interest @ 18% per annum for the delay in handing over possession of the unit, or in the alternative for refund of the entire consideration along with interest @18% per annum. The complainants did not receive any response to the legal notice dated 11.07.2017, in the month of August, 2017 the complainant no.1 received a call from the officials of the respondent to meet them at their office. The officials of the respondent further assured the complainant no.1 that they have already identified a lessee for the lease of the entire floor in which the unit was situated, and represented that the conveyance deed would be executed forthwith.

- i. That the maintenance agency continued to raise illegal demands against the complainants. On 03.04.2019, the complainant no.1 along with certain other investors in the project, met Mr. Dharmendra Bhandari, the Managing Director of the respondent who assured the complainant no.1 that he would personally review the maintenance charges. On 29.04.2019, complainant no.1 sent a letter to the respondent seeking the status of the review of the maintenance charges. No reply was received to the said notice.
- j. That the complainant was waiting for possession of the unit and execution of conveyance deed in his favour, the complainants was shocked to receive a notice from the Maintenance Agency, purportedly acting on behalf of the respondent, demanding payment of property tax for the unit. Further, there is no attachment of the unit by the municipal authorities, and in the anticipation that

the complainants would be received the possession and conveyance deed soon, the complainant paid the property taxes for the years 2016-2017 to 2019-2020 under protest. The complainants duly sent a notice to the Joint Commissioner, Municipal Corporation, Gurugram Haryana, while marking a copy to the respondent, duly informing them that unit is yet to be handed over to / transferred to the complainants, the liability to pay property tax should be on the respondent. The complainants further requested the municipal authorities to cancel further demands on the complainants and recover the said amounts from the respondent. Post the said notice, no further property tax was paid by the complainants.

- k. That the respondent had miserably failed to offer of possession or execute conveyance deed in favour of the complainants, on 06.08.2021 the complainants sent another notice to the respondent categorically stating that they had not handed over possession of the unit or had the same registered in favour of the complainants.
- l. That the respondent sent a reply on 14.08.2021 to the complainants' legal notice stating that "physical possession is not possible". The respondent, though admitting that maintenance charges were applicable from the date of offer of possession, maliciously claimed that maintenance charges were still payable by the complainants. As per clauses 15 and 16 of the BBA, under which the respondent reserved absolute right to lease the unit to any third party, the respondent not only refused to offer possession of the unit for which

the entire consideration was paid in 2013, but also discouraged the complainants from even obtaining registration of the unit in its favour. However, the respondent represented to the complainants that they were looking for prospective lessees and had already found lessees for the ground, first and second floor.

- m. That despite repeated patience shown by the complainants, the respondent once again miserably failed to comply with the terms of the BBA. This raised suspicion regarding the conduct of the respondent and the complainants began doubting the bonafide of the respondent. Accordingly, the complainants inspected the status of the licence granted by the DTCP for the project and its RERA registration status around the month of December 2023. That on the website of the DTCP it was revealed that the renewal of the licence for development of the project as well as the grant of completion certificate had been rejected by the DTCP on 30.01.2018. The letter for rejection of the grant of completion certificate revealed that the licensee had applied for a completion certificate on 29.09.2016, in which deficiencies were conveyed on 20.06.2017 which were never cured by the licensee, and none appeared for the licensee for a personal hearing fixed on 16.11.2017, due to which the request for grant of completion certificate was rejected. Furthermore, the respondent had not even registered the project under the RERA Act.
- n. That the respondent has perpetrated a concerted fraud by forcing the complainant to pay the entire sale consideration in the year

2013 based on an extremely onerous and one-sided agreement, and refusing to give possession of the unit to the complainants and further refusing to execute a conveyance deed in favour of the complainants. Further, the act of cancellation of the license issued for the property, coupled with the non-registration of the project under the RERA Act implies that the respondent was not even in a position to execute a valid conveyance deed in favour of the complainants or legally offer possession.

- o. That the respondent has been solely in breach of the BBA as well as the RERA Act, and has been unable to complete the project for over 17 years. Till date, the complainants have paid over 95% of the payment as per the construction linked payment plan and have still not been offered possession of the unit. The unit booked by the Complainant is nowhere close to completion and is not even in a habitable stage. The unit cannot even be deemed to be completed, or deemed to be in a situation that a completion certificate of the unit could have been granted by the appropriate authorities. The alleged occupancy certificate, claimed to have been received by the respondent in the year 2013, is inconsequential and irrelevant, in light of the fact that possession was never offered to the complainant, that the unit is still not completed, and that the application for completion certificate and license stands cancelled.
- p. That as per Clause 15 of the BBA, which mandates that the respondent shall have the sole right to lease the unit, and the

complainant shall have no right whatsoever to seek possession of the unit or lease out the unit independently, is a one-sided, onerous and unfair contract term which cannot bind the complainant. The respondent unilaterally defers the possession of the unit indefinitely, and puts the complainant at the mercy of the respondent, who may choose to never lease out the unit to any third party. There is not even a minimum guarantee set out in the BBA, implying that the respondent would be at liberty to decide the lease rent as well, which, considering the nature and conduct of the respondent, would allow it to lease out the unit at an extremely low rate, while taking exorbitant commission from the third party, against which once again the complainant would have no remedy under the BBA. Hence, as held by this Authority on numerous occasions, clause 15 of the BBA should be deemed to be onerous, one sided and a coercive clause which cannot bind the complainant who was forced to sign on the dotted line in the agreement prepared by the respondent.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 1. To direct the respondent to refund the entire amount paid by the complainants in respect of the apartment, to the complainants along with interest @ 10.85% per annum till its realisation in terms of the RERA Act, 2016.

- II. To direct the respondent to mandatorily register the project titled as "Orient – Bestech Business Towers" as per section 3 of the RERA Act and also obtain a completion certificate and provide the same to the allottees in terms of section 11 (4) (b) of the RERA Act.
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 contested the complaint on the following grounds: -
- a) That the present complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The occupation certificate in respect of the apartment/tower in question was received on 08.05.2013, i.e. well before the notification of the Haryana Real Estate Regulation and Development Rules 2017.
 - b) That the complaint is barred by limitation and liable to be dismissed on this ground as well. Symbolic possession of the unit was offered to the complainants as far back as 01.07.2013. The complaint has been filed after a delay of more than 10 years and is liable to be dismissed as time barred.
 - c) That the complainants are investors and not aggrieved persons under the Act.
 - d) That the complainants were provisionally allotted IT/cyber space no. 822 in the 8th floor of the said project admeasuring 5000 sq. ft. approximately. By letter dated 04.02.2008, the complainants were

informed that construction of the project had commenced and as per applicable payment plan, the complainants were called upon to make payment of instalment payable upon achievement of the construction milestone, start of foundation. That by letter dated 08.09.2008, the complainants were called upon to make payment completion of ground floor roof slab as per the applicable payment plan. Further, 04.11.2008, the complainants were called upon to make payment of instalment payable upon achievement of the construction milestone, on completion of 3rd floor roof slab as per the applicable payment plan etc.

- e) That BBA was forwarded to the complainants for the execution under cover of letter dated 02.09.2009 and the same was executed on 03.03.2009.
- f) That initially the 4th floor of the project had been identified for persons who wanted to avail possession of the units booked by them for their own use. Such units have been duly partitioned by construction of intervening walls, provisioning of electrical wiring, internal fixtures, fittings etc at the cost of the allottees.
- g) That at the time of booking it was communicated to the complainants that in case of units meant for self-use, in addition to the bare shell cost of the unit for self-use, the complainant would also be liable to bear the charges towards the necessary works including construction of partitions, electrical wiring, internal fixtures, fittings etc in accordance with clause 4.3 of the buyer's agreement. The complainant was not prepared to make payment for such works and as such opted for a unit on 8th Floor, ear marked for leasing. Accordingly, IT space /cyber unit bearing no 822, located on

the 8th floor of the project and earmarked for leasing was allotted to the complainants, which allotment was duly accepted by the complainants by execution of the buyer's agreement in respect of the unit.

- h) That spaces meant for self use and those earmarked for leasing are dealt with differently in the buyer's agreement. Units such as the unit allotted to the complainants meant to be leased out by the respondent to prospective lessees are sold on bare shell basis, without any partitions and not capable of independent use as prospective lessees prefer to take entire floors of the building on lease and carry out fit outs/interiors as per their individual convenience.
- i) That clauses 14, 15 and 16 of the buyer's agreement deal with IT spaces/cyber units that are intended to be leased out to proposed lessees to be identified by the respondent. In such cases physical possession of the IT space/cyber unit is not intended to be offered to the allottee. The respondent is authorised by the allottee to identify a suitable lessee, at its absolute discretion, and to negotiate the terms and conditions of lease on behalf of the allottee. Upon identification of a lessee by the respondent, the period stipulated in the contract for delivery of possession shall not apply. The allottee shall be entitled to rent paid by the lessee and shall not be entitled to possession of the cyber unit. The clause 17 provides that where an allottee is desirous of obtaining possession, the respondent has the absolute discretion to allot a different cyber unit situated on a floor which may be subsequently identified for self-users in the project. The clause 18 of the buyer's agreement provides that where

the option of lease is not availed by the developer and possession is delivered to the allottee, the allottee upon taking possession of the premises shall not have any claim against the developer in respect of any item of work, design, specification, building material etc.

- j) That clause 14 of the buyer's agreement provides that subject to timely payment of sale consideration by the complainants and subject to delays caused due to reasons beyond the power and authority of the respondent, possession of the unit was proposed to be offered within 24 months from the date of execution of the buyer's agreement.
- k) That after completion of construction, the respondent made an application for issuance of occupation certificate on 26.10.2012 and the same was issued on 08.05.2013. The respondent cannot be held liable for time taken by statutory authorities in issuing the occupation certificate and other approvals. Upon receipt of the occupation certificate dated 08.05.2013, symbolic possession of the unit was offered to the complainants vide letter dated 01.07.2013. The complainants were called upon to make payment of outstanding amount as per the attached statement of account. It was also mentioned in the letter that as a gesture of goodwill, maintenance charges had been reduced from Rs 15/- per sq. ft. to Rs.3/- per sq. ft. w.e.f. 01.09.2013 till 31.08.2014 or date of lease whichever ever was earlier. Payment of Rs.23,23,766/- was made by the complainants. That vide letter dated 12.04.2017, the complainants were called upon to remit an amount of Rs.1,15,988/- towards HVAT liability.

- l) That the respondent, on its part, made diligent efforts to identify a suitable lessee to take on lease the cyber unit allotted to the complainants as well as other units located in the building but was unable to do so due to prevailing market conditions/water logging on the service road leading to access to the project. The respondent duly kept the complainants apprised about its search for a suitable lessee.
- m) That after considerable delay, the complainants sent a letter dated 06.08.2021 once again asking for possession of the unit in question. The respondent, vide letter dated 14.08.2021, again reminded the complainants that the unit booked by them was not intended for self-use but to be leased out as a part of a larger transaction involving other units on the floor as well. The complainants were reminded that the complainants were liable to pay maintenance charges for the maintenance of the common areas and services of the project, in accordance with the buyer's agreement.
- n) That the respondent has made every effort to accommodate the complainants by offering an alternate unit meant for self-use, upon the applicable charges as set out in the buyer's agreement as the unit allotted to the complainants is not capable of independent/self-use. The respondent is not under any legal or contractual obligation to make such an offer but has done so in a spirit of goodwill. There is no breach or default whatsoever that can be legitimately imputed to the respondent. The respondent cannot be held liable for its inability, due to circumstances beyond the power and control of the respondent, to locate a suitable lessee for the unit in question. The respondent has always been ready and willing and is still ready and

willing to get the conveyance deed of the allotted unit registered in favour of the complainants. However, the complainants never gave their consent for the needful.

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 submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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;

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.

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the relief sought by the complainants.

G. I. To direct the respondent to refund the entire amount paid by the complainants in respect of the apartment, to the complainants along with interest @ 10.85% per annum till its realisation in terms of the RERA Act, 2016

G.II

12. On consideration of the circumstances, documents, submissions made by the parties, the Authority observes that the unit in question was allotted to the allottee vide buyer's agreement dated 03.03.2009. As per clause 14 of the buyer's agreement, the possession of the subject unit was to be offered within 24 months i.e. 03.03.2011. However, Occupancy Certificate was issued by Competent Authority on 08.05.2013.
13. The respondent submitted that the complaint is barred by limitation as Occupancy Certificate was issued by Competent Authority way back on

08.05.2013 i.e. much prior to the enactment of Act, 2016, thus the Authority does not have jurisdiction to entertain the present complaint.

14. The complainant remained dormant [✓]of their rights for more than 11 years and they didn't approach any forum to avail their rights. There has been such a long unexplained delay in pursuing the matter. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be fetched to an extent that basic principles of jurisprudence are to be ignored.
15. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the Authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the Authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the Authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
16. Further, as observed in the landmark case i.e., ***B.L. Sreedhar and Ors. Vs. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that "Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of



their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law.

17. In the light of the above stated facts and applying aforesaid principles authority is of the view that the present complaint is not maintainable after such a long period of time as the law is not meant for those who are dormant over their rights. The Act has been established to regulate real estate sector and awarding relief in the present case would eventually open pandora box of litigation. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint stands dismissed.

18. File be consigned to registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.07.2024