

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

Complaint no.: 1940 of 2023
Date of filing : 08.05.2023
Date of decision : 12.08.2025

Anand Dua

R/o: C-38, LGF, Panchsheel Enclave, New Delhi-110017**Complainant**

Versus

M/S Anjali Promoters & Developers Pvt. Ltd.
Regd. Office: OT-14, 3rd Floor, Next Door Parklands,
Sector-76, Faridabad, Haryana-121004

Respondent

CORAM:	
Shri Arun Kumar	Chairperson
Shri Ashok Sangwan	Member

APPEARANCE:

Sh. Anshul Mittal (Advocate)

Sh. Harshit Batra (Advocate)

Complainant
Respondent**ORDER**

1. The present complaint has been filed by the complainants/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 to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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.	Heads	Information
1.	Name and location of the project	"CENTRA ONE", Sector-61, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	3.675 acres
5.	HRERA registered/ not registered	Not registered
6.	Allotment letter dated	16.06.2008 (as per page 25 of complaint)
7.	Date of execution memorandum of understanding	07.05.2014 (As per annexure- C4 on page no. 99 of the complaint)
8.	Date of execution of flat buyer's agreement	16.03.2009 (As per on page no. 35 of the complaint)
9.	Unit no.	807 on 8 th floor, tower 2 (As per on page no. 37 of the complaint)
10.	Super Area	1000 sq. ft. (As per on page no. 37 of the complaint)
11.	Possession clause	2.1 <i>The possession of the said Premises shall be endeavoured to be delivered to the Intending Purchaser by 31st December 2011, however, subject to clause 9 herein and strict adherence to the terms and conditions of this Agreement by the Indenting Purchaser"</i> (as per page 40 of complaint)
12.	Due date of delivery of possession	31.12.2011 [as per page no 41 of complaint]
13.	Total consideration	Rs. 65,69,511/- (As per SOA on page no. 80 of the complaint)



14.	Total amount paid by the complainants	Rs. 55,57,723/- [as alleged by the complainant at pg. 16 of complaint]
15.	Occupation Certificate	09.10.2018
16.	Offer of possession for different unit 09-907, 9 th floor admeasuring 1033 sq. ft.	19.11.2018 [pg. 78 of complaint]
17.	Settlement letter wherein the complainant was given a credit of ₹8,55,045/- and in lieu of which the complainant has to make payment of ₹2,00,000/- which was duly made by the complainant on 20.12.2019.	19.12.2019

B. Facts of the complaint

3. The complainant has made the following submissions: -
- The Complainant sent an application for registration of Commercial space dated 29.11.2006 to BPTP Ltd.. The Complainant paid an advance amount of Rs. 1,05,000/- through cheque no. 013250 dated 29.11.2006. The Complainant paid an amount of total Rs. 8,66,250/- towards the payment of 1st installment through 3 different dated cheques.
 - The opposite party issued Allotment Cum Demand letter dated 16.06.2008 for the Commercial unit bearing no. 08-807 in 'Centra One', sector- 61, Gurgaon, Haryana. The Complainant made the payment of total Rs. 14,82,250/-. The Opposite Party marketed and assured that the Project will be complete by 31.10.2011, The Complainant on the assurance of the opposite party entered into an SBA with the Opposite Party for sale of office unit bearing no. 807, on 8th Floor having a super area of approximately 1000 square feet

- (92.90 square meters) ("Premises") for a consideration of Rs. 4860/- per square feet with a discount of Rs. 1,55,000/-. The total consideration for the said premises was Rs. 47,35,000/-
- c. That Clause 2 of the said SBA categorically covenants that possession of the said premises will be delivered by 31.12.2011 along with an additional grace period of 6 months i.e. till 30.06.2012. Further, Clause 2.2 of the SBA stipulates that, in the event, the Opposite Party fails to deliver the possession of the said premises to the Complainant by 30.06.2012, then the Opposite Party is liable to pay penalty to the Complainant at the rate of Rs. 15 (Rupees Fifteen Only) per sq. ft. per month till the date of handing over the said Premises. Clause 11 of the SBA moreover stipulates, "The time is the essence of this contract".
- d. That the Complainant in accordance with the terms of payment in the SBA made timely payments to the Opposite Party. That on 19.11.2018, the Opposite Party almost after a huge inordinate delay of 6 years 5 months offered possession of the Premises ("Letter of possession") for a new unit bearing no. 09-907, 9th floor, admeasuring 1033 sq. ft. (95.97 sq. mtrs.) however, to the utter shock and surprise of the Complaint, the Opposite Party claimed that the Project was delayed allegedly due to force majeure condition i.e. delay in release of approved building plans by the DTCP and forcing the Company to re-submit fresh building plans.
- e. That from a bare perusal of the Letter of Possession it is apparent that though the Opposite Party admits that there has been delay in handling of the possession of Premises due to default in depositing the EDC/IDC and thereafter starting construction without approved building plans, however, as a counterblast to payment of penalty

under Clause 2.2 of the SBA to the Complainant, the Opposite Party for the first time claimed that the said delay is purportedly attributable to force majeure condition without providing any justification.

- f. That Clause 2.2 of the SBA unequivocally entitles the Complainant to claim the possession of the premises along with the amount at the prescribed rate on account of delay in handing over the possession of the said Premises to the Complainant. That the Opposite Party is attempting to wriggle out of its obligation to pay the admitted penalty amount to the Complainant under the guise of force majeure condition under the SBA. Needless to say, the said amount of penalty is a debt due and payable by the Opposite Party as on date to the Complainant.
- g. The Opposite party due to not able to complete the project and not able to give possession of the unit on due time, without the consent of the Complainant allotted an alternate unit bearing no. 09-907 in the same project to the Complainant. The Opposite party also sent a possession offer letter dated 19.11.2018 of the new office unit space which is a complete violation of the provision under RERA Act. It is pertinent to mention herein that the new unit was also not completed at that time as the Complainant personally visited the site for verification.
- h. That left with no other option the Complainant was compelled to send a Legal Notice dated 04.02.2019 calling upon the Opposite Party to pay an amount of Rs. 11,55,000/- being penalty amount calculated at rate of Rs. 15 per sq. ft. for the period of 30.06.2012 till 19.11.2018 as penalty payable for delay in handling over the possession of the

Premises under Clause 2 of the SBA along with interest at the rate of 18% till the date of payment of the said penalty amount.

- i. That the Opposite Party served a Reminder Notice dated 21.05.2019 upon the Complainant asking the Complainant to make the payment of dues/instalment against provisional booking/registration of Unit No. 09-907 in project "Centra One" at Gurugram, Haryana with booking date as 02.12.2006. The Complainant in desire of his dream office unit paid an amount of Rs. 2,00,000/- through cheque bearing no. 033315 dated 19.12.2019 and payment remittance of Rs. 10,658/- towards TDS as per the demand request of Opposite Party.
- j. The Complainants have endured substantial financial losses, mental hardships and constant harassment due to the deceitful, fraudulent and malafide conduct of the Opposite Party. The Complainants have always been ready and willing to make all payments and take possession of the unit and have made all payment as per the payment plan as and when demanded by the Opposite Party and despite the same, no possession has been offered till date even though more than 10 years have expired since due date of possession.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
 - a. Direct the Opposite Party to offer immediate Possession of Unit No. 807 fully constructed complete in all respects and pay delay possession charges @ MCLR+2% p.a. thereafter till the actual date of offer of physical possession.
 - b. Direct the Opposite Party to pay a sum of ₹1,00,000/- to Complainants as reimbursement of legal expenses.

D. Reply filed by the respondent:

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

- a. That the Complainant being interested in the group housing real estate development of the Respondent, known under the name and style of "CENTRA ONE" located at Sector 61, Gurugram, Haryana (the "Project") booked a unit in the said project. At this stage, it is pertinent to mention that the Project has all the necessary approvals and permissions.
- b. That the Complainant along with one Vijay Katyal booked a unit vide an application form dated 29.11.2006 by paying an amount of Rs. 1,05,000/- vide cheque no. 013250 dated 29.11.2006 drawn on UTI Bank. That pursuant thereof, a tentative unit bearing tentative number 08-807, 8th Floor, tentatively admeasuring 1000 sq. ft. (the "Old Unit") was allotted to the Complainant vide Allotment Letter dated 16.06.2008. It is submitted that prior to approaching the Respondent, the Complainant had conducted extensive and independent enquiries regarding the Project and it was only after the Complainant was fully satisfied with regard to all aspects of the Project, that the Complainant took an independent and informed decision to purchase a unit, un-influenced in any manner by the Respondent.
- c. That consequently, a Space Buyer's Agreement dated 16.03.2009 was executed between Vijay Katyal, the Complainant and Respondent (the "Agreement"). It is pertinent to mention that the said Space Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the Parties. That however, the Complainant and Vijay Katyal had requested the name deletion of Vijay Katyal and the Respondent being

a customer centric company, accepted the request of the Complainant and deleted the name of Vijay Katyal on 21.04.2017.

- d. That both the parties were obligated to fulfil their respective obligations as set out under the Agreement. That the Agreement categorically mentions that the unit of the Complainant is tentative in nature and is subject to change during the completion of the construction of the said Project and the same shall be confirmed to the Complainant during the Offer of Possession.
- e. That in light of the said clauses, categorically agreed between the Developer and the Complainant, it is submitted that the Unit allocated to the Complainant was tentative and subject to change. On the basis of the same, the Unit was changed and the new unit no. 907 on 9th floor, ad, 1033 sq. ft. (the "Unit") was allotted to the Complainant. Thus, the proposed due date for offer of possession comes out to be 31.12.2011.
- f. It is imperative to mention here that the due date of delivery of the unit was subjective in nature and was dependent on the force majeure circumstances and the Purchaser/allottee complying with all the terms and conditions of the Agreement along with timely payments of instalments of sale consideration.
- g. That it is most humbly submitted that 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 Respondents in accordance with clause 9 of the Agreement.
- h. At this stage, it is categorical to note that the Respondent was faced with certain force majeure events including but not limited to 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. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the force majeure circumstances, the Respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Complainant and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various

authorities/forums/courts, before passing of the subjective due date of offer of possession.

- i. That from the facts indicated above and documents appended, it is comprehensively established that a period of 166 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of force majeure, as stated above. Thus, the Respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the Project during the time period indicated above and therefore the same needs to be duly considered and the subjective due date should be rightly extended. In a similar case where such orders were brought before the Hon'ble Authority in the Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, this Ld. Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the Respondent-builder.
- j. That all these circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the Respondent-builder. That it must also be noted that the Respondents had the right to suspend the construction of the Project upon happening of circumstances beyond the control of the Complainants as per Clause 9 of the Agreement, however, despite all the hardships faced by the Respondents, the Respondent did not suspend the construction and managed to keep the Project afloat through all the adversities.

- k. Furthermore, it needs to be seen that the development of the Unit and the Project as a whole is largely dependent on the fulfilment of the allottees in timely clearing their dues. That the due date of offer of possession was also dependent on the timely payment by the Complainant, which, the Complainant failed to do. The demands were raised as per the agreed payment plan however, despite the same, the Complainant has delayed the payment against the Unit.
- l. 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 11 of the Agreement. That in case of default by the Complainant, the Complainant was bound to make the payment of interest. That this obligation has also been noted in the RERA, 2016.
- m. The above-mentioned provisions note the mandatory obligation of the Complainant to make the due payments against the Unit, which under no circumstance whatsoever, can be escaped. It is submitted that the demand letters were raised as per the agreed payment plan however, the Complainant had 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. That the bonafide of the Respondent is also essential to be highlighted at this instance, who had served request letters at every stage and reminder notice in case of non-payment.
- n. It is further submitted that despite being faced with the aforementioned challenges and circumstances beyond the control of the Respondent, the Respondent has diligently developed the Project

- in question. That it must be noted by the Hon'ble Authority that despite the default caused, the Respondent applied for an Occupation Certificate in respect of the said Project and the same was thereafter issued dated 09.10.2018. That thereafter, the offer of possession was rightly made on 19.11.2018. That upon the receipt of the offer of possession, the Complainant failed to make the payment of the outstanding dues, upon which, reminders dated 18.12.2018, 11.02.2019, and 21.05.2019 were sent to the Complainant.
- o. That after the receipt of offer of possession dated 19.11.2018, the Complainant had previously filed a suit before NCLT, however, with respect to all the claims of both the parties, the matter was fully and finally settled vide Settlement Letter dated 19.11.2019 wherein a credit of Rs. 8,55,045 was given to the Complainant. It was agreed between the Complainant had to make the payment of Rs. 2,00,000 for enforcing the settlement terms, which was subsequently done by the Complainant and a payment receipt dated 20.12.2019 for Rs. 2,00,000 was generated in favour of the Complainant. The Complainant had also made a payment of Rs. 10,657 as TDS for which, form 16B was also submitted. That after the full and final settlement between the parties, the Complainant withdrew the case before NCLT. That the Complainant has wilfully with the intention to mislead this Hon'ble Authority did not disclose this fact and the present complaint is bound to be dismissed on this ground alone. The Respondent seeks liberty to bring on record all the documents with respect to case filed before NCLT.
- p. That the offer of the Respondent was duly accepted by the Complainant which was also noted in the full and final settlement

dated 19.11.2018 (titled as discount letter). That after the acceptance of the same, the Complainant made of payment in terms of the settlement.

- q. That the essence of a valid contract, as per the Indian Contracts Act, 1872, are, offer, acceptance, and consideration. The offer of the Respondent for full and final settlement was unequivocally accepted by the Complainant. The consideration of the same was also exchanged between the Parties when, pursuant to the terms of the offer, the Complainants made the due payment on 20.12.2019 and the Respondent credited the compensation to the Complainant. That the essence of a valid contract having been met and the fact that the Parties had consensus ad idem in regards to the fact that no further claim can be raised in respect of the Agreement and the Act, the present claim cannot be raised, under any manner whatsoever and hence, the present claim is bound to be dismissed. That it is a settled law the settlement between the parties being a valid contract, is enforceable in law. The reciprocal promises made by the parties, bind them into a valid contract. The Hon'ble Supreme Court had also noted in Deddappa and Ors. vs. The Branch Manager, National Insurance Co. Ltd. (12.12.2007 - SC)
- r. That since the facts and circumstances of the present case reveal that the settlement between the parties involved offer, acceptance, reciprocal promises, and consideration, it is a valid contract enforceable in law not only in terms of the aforementioned pronouncement of the Hon'ble Apex Court but also the pre-requisites of section 10 of the Indian Contracts Act, 1872; and the Complainants cannot be oblivious of the same.

- s. That at this stage, without prejudice to the rights of the Respondent, it is further also submitted that it is trite law that the nomenclature of a document does not show its true meaning. In order to decipher the true meaning of a document, the contents thereof have to be seen and mere reliance on its nomenclature cannot be made and the same is not determinative of the nature and character of the document. In the present circumstance, even though the settlement dated 19.12.2019 is subjected as "Discount Letter", however, a bare perusal of the contents of the same (as noted above) ex facie reveals that the same is a full and final settlement letter and no other inference can be laid. This is in addition to the counter signature of the Parties on the bottom of the letter noting the final settlement of accounts.
- t. That similarly, in the present case, the issuance of the letter dated 19.12.2019 which fulfils the pre-requisites of a settlement letter/agreement cannot be considered a mere credit and has to be noted as a settlement letter/agreement only. In this case as well, it has been noted that a mere label is not determinative of the nature of a document. Similarly, in the present case, the contents of the letter dated 19.12.2019 need to be seen in light of the settlement between the parties, having been concluded voluntary, conscious; and intentionally.
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 submissions made by the complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

8. 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

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

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee 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 complainants at a later stage.

F. Findings regarding relief sought by the complainant.

F.I. Direct the opposite party to offer immediate possession of unit no. 807 fully constructed complete in all respects and pay delay possession charges @ MCLR+2% p.a. thereafter till the actual date of offer of physical possession.

11. In the present matter the complainant executed a BBA dated 16.03.2009 with respect to the unit bearing number 807 on 8th floor tower 2 admeasuring 1000 sq. ft. with the respondent. The complainant has paid ₹55,57,723/- against the total sale consideration of the said unit. As per clause 2.1 of the BBA the possession of the unit was to be delivered by 31.12.2011. Thereafter the respondent offered the possession of a different unit on 19.11.2018 after receiving the OC from the competent authority on 09.10.2018. The Authority notes that the respondent issued a settlement letter dated 19.12.2019, wherein a discount of ₹8,55,045/- was offered to the complainant. In return, the complainant was required to make a payment of ₹2,00,000/-, which was duly made on 20.12.2019.
12. The settlement letter explicitly stated that all grievances, claims, or allegations related to the payment terms of the unit stood fully and finally resolved in favour of BPTP. It further recorded that the complainant would not raise any future claims against the company concerning charges, rates applied, or compensation for delayed possession under the agreement or under applicable laws, including the Haryana Real Estate (Regulation and Development) Act, 2016.
13. The Authority further observes that the complainant accepted and acted upon the settlement letter by making the payment as stipulated. Therefore, having voluntarily accepted the terms and derived benefit therefrom, the complainant is now estopped from challenging the terms of settlement or raising any claim relating to delayed possession charges.
14. Accordingly, the relief sought in respect of delay possession charges is hereby dismissed.

15. As far as relief of possession is concerned the respondent is directed to handover the physical possession of the said unit to the complainant in terms of the settlement letter dated 19.12.2019.
16. In view of the above, this Authority does not find the reliefs sought by the complainant maintainable under the provisions of the Act, 2016 & hence declined since, the parties have already settled the matter vide settlement dated 19.12.2019 and the parties have also acted upon such settlement executed inter-se parties in terms of settlement arrived thereto.

F.II. Direct the opposite party to pay a sum of ₹1,00,000/- to complainants as reimbursement of legal expenses.

17. The complainant is also seeking relief w.r.t. litigation cost. It is observed that the Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the 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.

G. 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):
- a. The respondent is directed to handover the possession of the unit purchased, within two months form the date of this order and

thereafter, the complainants are obligated to take the physical possession within 2 months as per Section 19 (10) of the Act, 2016.

19. Complaint stands disposed of.
20. File be consigned to registry.



(Ashok Sangwan)
Member



(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.08.2025



HARERA
GURUGRAM