

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM****Complaint no. : 6195 of 2024 and
6349 of 2024****Order pronounced on : 09.12.2025**

NAME OF THE BUILDER		BESTECH INDIA PRIVATE LIMITED	
PROJECT NAME		"CYBER PARK"	
Sr. No.	Case No.	Case title	APPEARANCE
1.	CR/6195/2024	Sunil Mehra and Sadhna Mehra V/S Bestech India Private Limited	Shalabh Singhal (Advocate) Shri Ishan Dang (Advocate)
2.	CR/6349/2024	Sunil Mehra and Sadhna Mehra V/S Bestech India Private Limited	Shalabh Singhal (Advocate) Shri Ishan Dang (Advocate)

Coram:Shri Arun Kumar
Shri Phool Singh Saini**Chairman
Member****ORDER**

1. This order shall dispose of both the complaints titled above, filed before this Authority in form CRA under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations,

responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Bestech Cyber Park" being developed by the same respondent-promoters i.e., "Bestech India Private Limited. The issue involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, and seeking refund of deposited amount.
3. The details of the complaints, reply to status, plot/unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location				BESTECH CYBER PARK, NH-8, GURUGRAM		
Possession Clause: - 14. "That Subject to provisions of clauses 15 and 16 the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within thirty months from the date of this Agreement." [As per BBA at page 43 of complaint]						
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Plot/unit No.	Date of execution of plot buyer's agreement	Due date of possession	Total Consideration / Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/6195/2024 Sunil Mehra and Sadhna Mehra V/S Bestech India Private Limited	306 sq. ft. [as per buyer's agreement at page 37 of	04.12.2009	04.06.2012 [Calculated as per possession clause 30 months from the date of the	TSC: - 46,37,500/- [As per BBA at page 38 of complaint] AP: - 54,39,016/- [As per receipts	i. Direct the respondent to refund the amount paid along with interest.

	DOF- 26.12.2024 REPLY- 02.04.2025	complain nt]		agreement i.e., 04.12.2009]	available on record at page 70-82 of complaint]	
2.	CR/6349/2024 Sunil Mehra and Sadhna Mehra V/S Bestech India Private Limited DOF- REPLY-	307 sq. ft. [as per buyer's agreement at page 38 of complain nt]	04.12.200 9	04.06.2012 [Calculated as per possession clause 30 months from the date of the agreement i.e., 04.12.2009]	TSC: - 46,37,500/- [As per BBA at page 39 of complaint] AP: - 54,39,016/- [As per receipts available on record at page 74-83 of complaint]	ii.Direct the respond ent to refund the amount paid along with interest.
Note: In the table referred above certain abbreviation have been used. They are elaborated as follows:						
Abbreviation		Full Form				
DOF		Date of filing of complaint				
TSC		Total sale consideration				
AP		Amount paid by the allottees(s)				

4. The facts of both the complaints filed by the complainants are similar. Out of the above-mentioned case, the particulars of lead case **CR/6195/2024 titled as "Sunil Mehra and Sadhna Mehra V/S Bestech India Private Limited"** are being taken into consideration for determining the rights of the parties.

A. Unit and project related details

5. 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. N.	Particulars	Details
1.	Name of the project	Bestech Cyber Park

2.	Nature of the project	Commercial
3.	RERA Registered/ not registered	Un-registered
4.	License no. and validity	Not available
5.	Unit no.	306, 3 rd floor [Page 37 of complaint]
6.	Unit area admeasuring	2500 sq. ft. super area [Page 37 of complaint]
7.	Date of booking	25.09.2006
8.	Date of allotment	25.09.2006
9.	Date of Builder buyer Agreement	04.12.2009 [Page 35 of complaint]
10.	Payment Plan	Construction linked plan [Page 24 of complaint]
11.	Possession clause	14. "That Subject to provisions of clauses 15 and 16 the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within thirty months from the date of this Agreement." [As per BBA at page 43 of complaint]
12.	Due date of possession	04.06.2012 [as per possession clause]
13.	Total sale consideration	Rs.46,37,500/- [As per BBA at page 38 of complaint] Rs.43,75,000/- as alleged by complainant
14.	Amount paid by the complainant	Rs.54,39,016/-

		[As alleged by complainant and receipts available on record] [Page 70-82 of complaint]	
15.	Occupation certificate Completion certificate	13.05.2010 03.03.2021 [Page 31-33 of reply]	
16.	Symbolic possession	16.08.2012 [as per pleading at page 25 of reply]	
17.	Demand/Reminder Letter	13.07.2008, 05.11.2008, 22.01.2009, 16.06.2009, 08.12.2009, 31.01.2013, 03.04.2013, 16.08.2012, 17.04.2017 [Page 26-32 of complaint]	
18.	Legal Notice to lease out the unit and execute Agree. b/w tenant and complainant	22.11.2018 [Pg.83 of complaint]	
19.	Reply to legal notice denying all allegations and calling complainants to execute CD	28.01.2019 [Pg.91 of complaint]	
20.	Notice by Respondent to complainant to execute conveyance deed	16.08.2012 [Page 64 of complaint]	

B. Facts of the complaint:

6. The complainants have made following submissions: -

- a. The respondent/promoter in the year 2006, through its various employees / agents / brokers / channel partners, advertisements in the print media etc., solicited bookings of commercial spaces in an IT/Cyber Park by the name "Bestech Cyber Park" then proposed to be developed by the respondent/promoter on a piece of land along

- NH-9, at Sector 37, Gurugram, Haryana and falling in the revenue estate of village Narsingpur, Tehsil and District Gurugram, Haryana.
- b. The respondent/promoter in the month of August-2006 approached the complainants and solicited bookings in the said project on various representations/assurances and promises including inter-alia, the investment in the said project would yield good financial returns not only in the form of appreciation of prices but by way of rental income also; the respondent/promoter shall be responsible to find a tenant for a larger area including the space to be booked by the complainants and to ensure flow of rental income from the said tenant to them; the project shall be completed within 30 months etc. As the complainants did not require any unit in the said IT/Cyber project for their self-use they being in the business of manufacture and export of garments, they were persuaded to book the space as an investment and source of steady flow of rental income within 30 months of booking.
- c. That relying on the representations/assurances and promises made to them, the complainants agreed to invest in the said project and paid an amount of Rs.4,37,500/- as booking amount vide ch. bearing no.107365 dated 25.09.2006 towards purchase of commercial/IT/Cyber space no. 306 on third floor measuring approx 2500 sq. ft. super area in the said project. The respondent/promoter acknowledged the said booking and receipt of the said payment vide its letter and receipt both dated 25.09.2006. The said booking was made by the complainants solely due to the respondent/promoter's commitment to let out the same and ensure rental income therefrom within period of 30 months.

- d. The respondent/promoter thereafter vide its letter dated 23.03.2007 sent to the complainants installment linked payment plan. As per this letter the basic sale price of the said booked space was Rs.43,75,000/- payable as per the following schedule:

Construction Link Payment Plan			
			Installment
1.	On application for booking	10% of BSP	4,37,500
2.	Within 60 days of booking	10% of BSP	4,37,500
3.	On start of foundation	10% of BSP	4,37,500
4.	On completion of Ground Floor Roof Slab	10% of BSP	4,37,500
5.	On completion of 3 rd Floor Roof Slab	10% of BSP	4,37,500
6.	On completion of 5 th Floor Roof Slab	10% of BSP	4,37,500
7.	On completion of Top Floor Roof Slab	10% of BSP	4,37,500
8.	On completion of Internal Plaster/Flooring	10% of BSP	4,37,500
9.	On completion of External Glazing	10% of BSP	4,37,500
10.	At time of notice for possession	10% of BSP + Stamp duty + any other charges as applicable	4,37,500
	Total		43,75,000

- e. The respondent/promoter, from time to time, demanded further instalments towards sale consideration and the complainants paid the same to the respondent/promoter without fail/default. That in the subsequent demand letters, the respondent/promoter demanded an additional amount of Rs. 2,62,500/-towards external and infrastructure development charges and Rs.7,50,000/- towards three car parking spaces. These two charges were not informed to

the complainants at the time of booking and they had not agreed to pay the same. Upon being objected, the complainants were informed that the charges towards external and infrastructure development charges were the statutory charges to be paid to Govt and the complainants agreed to pay the same. The complainants as such paid the demands towards basic sale price of the unit and towards external and infrastructure development charges. For demand towards car parking the complainants were informed it was compulsory for them to take three parking spaces. The complainants did not agree for the said demand as they did not require any car parking spaces and these were not informed to them at the time of booking. The respondent/promoter continued to raise demand for the same and finally the complainants had to conceded to this illegal demand of the respondent/promoter when in June 2009 they agreed to pay Rs.5,00,000/- towards two car parking spaces. The complainants thereafter paid the said amount also.

- f. That the respondent/promoter started construction sometime in July, 2007 as the installment payable "on start of foundation" was demanded in June, 2007 with due date on 03.07.2007. As per the communication sent by the respondent/promoter to the complainants in March 2009, the structural work and the external granite cladding had been completed and structure glazing work was in progress. By November, 2009, the respondent/promoter had received more than 90% of the agreed sale consideration yet no agreement qua sale of the said unit had been executed by the respondent/promoter despite demand from the complainants in this regard.

- g. That, a buyer's agreement dated 04.12.2009 was executed between the respondent/promoter and the complainants in respect of said unit in the said project. The complainants, in fact, were forced to sign on dotted lines a contract that contained various unconscionable terms and was heavily tilted in the respondent/promoter's favour. The complainants having parted with more than 90% of the agreed sale consideration by then were left with no bargain power and had no other option but to sign the same under the threat of adverse action by the respondent/promoter including cancellation and forfeiture.
- h. The respondent/promoter had already raised demand for all the installments except the last installment and had claimed that the construction had almost been complete, yet in the agreement the respondent/promoter provided themselves a period of 30 months from the date of execution of the agreement for completion of construction, which in itself is a clear reflection of unethical, unconscionable and unfair trade practices adopted by the respondent/promoter while dealing with the complainants and with various other buyers.
- i. The respondent/promoter was under an obligation to lease out the said unit to a tenant and to ensure rental income to the complainants and in the agreement the respondent/promoters kept with themselves exclusive right to identify a tenant and to lease out the said unit to the said tenant on the terms and conditions the respondent/promoters might deem fit and proper as per their discretion. The complainants as per the agreement was bound to accept the said tenant and the terms and condition of tenancy as agreed/finalized by the respondent/promoters with the tenant. In

the event, the complainants were not accepting the tenant and the terms of tenancy as finalized by the respondent/promoters, the respondent/promoters were entitled to cancel the agreement and to wash off their hands merely by returning the amount paid without any appreciation/interest. Clause 15 and 16 of the agreement are relevant in this regard and reproduced as under:

15. *That It shall be the absolute discretion of the DEVELOPER to lease out the entire building / a particular floor or any part thereof including the aforesaid cyber unit. The ALLOTTEE(S) hereby / authorizes the DEVELOPER to finalize the lease for the cyber unit subject matter of this agreement.*
The DEVELOPER shall inform the ALLOTTEE(S) pertaining to terms and conditions of lease as settled with the LESSEE. The ALLOTTEE(S) shall not be entitled to lease the cyber unit without the consent of the DEVELOPER.
The terms and conditions of lease negotiated by the DEVELOPER as aforesaid shall be final and binding upon the ALLOTTEE(S). in case the
ALLOTTEE(S) obstructs or neglects or commits any default in execution of necessary documents for creation of lease after the same has been
finalized by the DEVELOPER, in the event of the DEVELOPER shall have the right to purchase the aforesaid cyber unit from the ALLOTTEE(S) on the same value at which it was sold to the ALLOTTEE(S).
16. *That in the event of identification of LESSEE by the DEVELOPER as stated above, the period stipulated in this contract for delivery of possession shall not apply. In such case the DEVELOPER shall not be bound to deliver physical possession of the cyber unit subject matter of this contract to the ALLOTTEE(S) and the ALLOTTEE(S) shall only be entitled to monthly rents to be paid by the LESSEE subject to execution of various documents by the ALLOTTEE(S) admitting and acknowledging the LESSEE to be tenant of the cyber unit. In case the ALLOTTEE(S) commits default in execution of documents or refrains from admitting and acknowledging the LESSEE inducted by the DEVELOPER as the tenant, in that event the ALLOTTEE(S) shall not be entitled to any rental and the DEVELOPER shall be entitled to appropriate the monthly rent till such time the needful is done by ALLOTTEE(S). The ALLOTTEE(S) shall not be entitled to stake any claim to the rental amount realized and utilized by the DEVELOPER. In the event of failure on the part of ALLOTTEE(S) to accept the LESSEE inducted by the DEVELOPER as lawful tenant, the ALLOTTEE(S) shall be bound to accept refund of amounts paid by it to the*

DEVELOPER towards full and final satisfaction of consideration to be refunded back to the ALLOTTEE(S) and pursuant to refund the DEVELOPER shall be entitled to deal with, use, utilize and / or alienate the cyber unit subject matter of this contract in any manner deemed fit by the DEVELOPER. This stipulation pertaining to creation of lease by the Developer with all its consequences set out above is the essence of this contract."

- j. The complainants, as aforesaid, did not require the said unit for their self use. Even otherwise their right to seek possession of the said unit for their self use was severally hampered/restricted under the agreement as the respondent/promoters secured for themselves a right to refuse such possession or to burden the complainants with a different unit of their choice. The complainants right to lease out the said unit was also severally restricted as such leasing required the respondent/promoters' prior permission which the respondent/promoters might refuse also.
- k. The respondent/promoter in the agreement, also secured a right for themselves not to handover possession of the said unit to the complainants and to put the tenant in possession directly. The complainants therefore were left completely at the respondent/promoter's mercy and despite having paid the entire sale consideration the only effective right they had was to receive rent decided by the respondent/promoters and from a tenant selected and identified by them. They were denied right to use, occupy and possesses and to put the said unit for any beneficial use despite being entitled to own the said unit and having paid the entire sale consideration.
- l. The respondent/promoter vide their letter dated 16.08.2012 informed the petitioners that occupation certificate for the project had been issued by the office of Directorate of Town and Country Planning Haryana vide memo No. ZP-193/JD(BS)/2010/6245 dated

13.05.2010 and the complainants were called upon to get the conveyance deed executed upon payment of balance dues to avoid levy of interest. In the said letter also the respondent/promoter reiterated their exclusive right to finalize and let out the said unit to a prospective lessee and assured the complainants that a formal lease deed shall be executed soon between the complainants and the prospective lessee as per the terms and conditions of the agreement. The possession of the said unit was not offered to the complainants in the said letter dated 16.08.2012. In fact, the possession of the said unit has not been offered to the complainant till date.

- m. The demands raised in the said letter were not in accordance with the terms and conditions of the agreement and the complainants objected to any further payment till leasing of the said unit by the respondent/promoters. However, they had to pay the demand towards basic sale price and enhanced EDC as raised in the aforesaid letter dated
- n. The respondent/promoter vide its letter dated 17.04.2017 demanded an amount of Rs.56,516/- towards VAT and the complainants paid the same vide ch. bearing no. 658959 dated 19.04.2017.
- o. The complainants as such have paid to the respondent/promoter the entire sale consideration of the said unit. In total an amount of Rs.54,39,016/- has been paid by the complainants to the respondent/promoter till date. The relevant details of the said receipts are mentioned herein below:

S.No.	Receipt No.	Receipt Date	Amount Paid (in Rs.)
1	31	25.09.06	4,37,500
2	031-A	19.04.07	4,37,500

3	031-B	03.07.07	4,37,500
4	205	29.07.08	4,37,500
5	287	18.11.08	4,37,500
6	680	16.02.09	4,37,500
7	1560	01.07.09	4,37,500
8	1561	01.07.09	4,37,500
9	1562	01.07.09	2,50,000
10	1563	01.07.09	2,50,000
11	1827	05.02.10	4,37,500
12	3733	16.02.13	6,82,500
13	5023	20.04.17	56,516
TOTAL			54,39,016

- p. That despite having received the entire sale consideration and lapse of considerable time, the respondent/promoter failed to let out the said unit to any prospective lessee in compliance of its obligation under clause 15 and 16 of the agreement and to ensure payment of market rent to the complainants from the prospective lessee. Every time complainant requested for discharge of the said obligation, they were promised and assured that obligation shall be discharged soon and the said unit shall soon be let out in compliance of respondent/promoter's obligations under the said agreement.
- q. The complainants after waiting for a considerable time sent a legal notice dated 22.11.2018 calling upon the respondent/promoter, inter-alia, to find a tenant for the said unit and ensure payment of market rent from the said tenant to the complainant and also to compensate them for the losses suffered by them due to delay committed by the respondent/promoter in discharging its said obligation.
- r. The respondent/promoter instead of complying with the said notice, sent a reply dated 28.01.2019 denying the claims of the complainants for compensation on false and flimsy grounds including that the agreement did not provide for any time limit to discharge the

obligation under clause 15 and 16 of the said agreement. That in the said reply also the respondent/promoter reiterated that the unit shall be let out to the said tenant as per the terms of the said agreement.

- s. That even after the said reply, a considerable time has lapsed but the respondent/promoter has not let out the said unit in discharge of its obligations under clause 15 and 16 of the agreement. The complainants have not been informed even whether any tenant has been identified/finalized by the respondent/promoter for the said unit. It is evident that the respondent/promoter continuously persisting with its rights to let out the said unit under clause 15 and 16 of the said agreement and till date possession of the same has not offered/handed over to the complainants.
- t. The agreed period of 30 months for completion of construction should be considered as commenced from the date of booking and not from the date of execution of the agreement. The respondent deliberately delayed execution of the agreement. The booking amount was paid by the complainants on 05.10.2006 and the respondent executed the agreement on 04.12.2009 and that too after having received more than 90% of the agreed sale consideration which was to be paid as per a construction linked payment schedule. During the period from Oct 2006 till 04.12.2009 the respondent commenced and continued the construction activity and claimed to have completed almost 90% of the construction before 04.12.2009. The respondent took undue advantage of its dominant position and mentioned in the agreement that the agreed period of 30 months for completion of construction shall commence from the date of execution of the agreement.
- u. That respondent failed to complete the construction and handover the unit even within the period mentioned in the agreement. The

possession of unit in question has not been offered to the complainants till date. The complainants cannot be made to wait indefinitely for respondent to discharge its obligations under the aforesaid agreement. The respondent cannot be allowed an indefinite period for discharge of its obligations under the said agreement. The complainants as such have now decided to opt out of the project and seek refund of the amount paid by them with prescribed rate of interest.

- v. The respondent has committed violation of the various provisions of the Real Estate (Regulation and Development) Act, 2016 particular section 17 and 18 thereof and the complainants are entitled to seek refund with prescribed rate of interest as well as compensation for the loss suffered by them due breaches of its obligations by the respondent under section 18 of the Act of 2016. The present complaint is confined to the relief of refund of the amount with prescribed rate of interest and since the complaint for seeking compensation is to be filed before the Ld. Adjudicating Officer appointed under the Act 2016, the complainant reserve their right to file an appropriate complaint for compensation before the Ld. AO. The present complaint is being filed without prejudice to seek compensation in accordance with law.
- w. The respondent/promoter's conduct in dealing with the complainants has been absolutely casual, opaque, unethical, illegal and driven by malafide intent to cause undue gains to yourself and undue losses to the complainants. That the complainants staunchly believe that they have been wronged under well thought out conspiracy whereby they were lured into investing money in the respondent/promoter's said project and were trapped into intricacies of contract only to misappropriate the complainants' money. The

respondent/promoter's intention has been purely and in true sense malicious. The respondent/promoter has received the total sale consideration and enjoying the same to the detriment of the complainants. The respondent/promoter must have done so with all other allottees also. Thus, gaining unlawfully at the cost of the allottees including the complainants. The complainants are filing the present suit without prejudice to their right to initiate appropriate action under criminal law for the various offences including the offence of cheating, misappropriation etc. against the respondent/promoter, their promoters, directors and principal officers.

C. Relief sought by the complainant:

7. The complainants have sought following relief(s):

I. Direct the respondent to refund the amount deposited by the complainant along with prescribed rate of interest.

8. 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.

9. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

a. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act/RERA') are not applicable to the project in question. The occupation Certificate in respect of the project was issued by the competent Authority on 13.05.2010, i.e., well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter

referred to as the 'Rules') and before RERA came into force. Thus, the project in question is not an 'Ongoing Project" under Rule 2(1)(o) of the Rules. The Authority does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone. Moreover, the respondent had also made an application for grant of Completion Certificate to the competent Authority on 31.07.2013, and the same was duly issued vide Memo No. LC-746-JE(S)/2021/5106 dated 03.03.2021.

- 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 by to the complainants as far back as on 16.08.2012. The so-called cause of action, if any, arose in favour of the complainants more than 12 years ago. The complaint is liable to be dismissed as barred by limitation.
- c. That the complainants have no locus standi or cause of action to file the present complaint and are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the complainants have not disclosed the real and true facts of the case.
- d. That the present complaint raises issues of such a nature which cannot be decided by way of summary proceedings contemplated under the Act. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Act and can only be adjudicated by the Civil Courts. The present complaint deserves to be dismissed on this ground alone.

- e. That the **complainants are investors** and not “aggrieved persons” under the Act and as such the present complaint is not maintainable at the complainant’s behest.
- f. That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented by respondent are considered to be architectural landmarks. The respondent has successfully developed residential, commercial and IT projects in Gurgaon after obtaining necessary permissions and approvals from the competent authorities in accordance with law. The associate companies of the respondent have also constructed and made operational Radisson Hotels in Gurgaon, Indore (Madhya Pradesh), Noida and at Nagpur. The respondent has promoted and developed “Bestech City” a duly approved residential colony in Dharuhera, District Rewari
- g. That the respondent has developed a duly licensed IT/Cyber park known as Bestech Cyber Park, located on NH8 in Village Narsinghpur, Gurgaon, Haryana, hereinafter referred to as “the Project”. Licence bearing no 1077 of 2006 was issued by the competent Authority for development of the said project. The Director, Town and Country Planning, Haryana sanctioned the building plans for development of the project vide memo no 8559 dated 23.03.2007. The demarcation and zoning plans of the said project were approved vide memo no 1164 dated 12.12.2006.
- h. That the complainants had approached the respondent in the month of September 2006 and expressed their interest in booking

a unit in the project. The complainants were allotted 2500 sq. ft. of area in the project subject to final confirmation of the area.

- i. That vide letter dated 23.03.2007, the complainants were informed that the zoning plan for the project had been approved by the Director, Town and Country Planning, Haryana. Along with the said letter, the complainants were provided with the installment linked plan opted by the complainants. The complainants were called upon to remit Rs.4,37,500/- being 10% of the basic sale price, on or before 15.04.2007.
- j. That the complainants had agreed and undertaken to make payment of sale consideration as per the applicable payment plan, on or before the due dates of payment. However, the complainants were irregular in making payment right from the very beginning. Consequently, the respondent was compelled to issue demand notices and reminders for payment to the complainants.
- k. That vide letter dated 07.06.2007 the complainants were informed that construction had commenced in the project. The complainants were called upon to make payment of Rs.4,37,500/- on or before 03.07.2007.
- l. That under cover of letter dated 09.05.2008, the buyer's agreements were forwarded to the complainants allottees for execution.
- m. That vide letter dated 15.04.2009 the complainants were apprised that the construction work at the site was progressing in full swing and that external glazing was being carried out which was intended to be finished in that month. The complainants were informed that there were outstanding dues amounting to Rs.16,25,000/- that was payable by the complainants and the complainants were requested

to clear the same at the earliest. The attention of the complainants was also drawn to the fact that as per the agreement between the parties, interest @ 18% p.a. compounded quarterly was accruing on delayed payments.

- n. That in the meanwhile, the complainants had sent a letter dated 23.03.2009 stating that they had not purchased any car parking space but might consider purchasing car parking area if a reasonable rate was quoted. The respondent replied vide letter dated 10.05.2009 reminding the complainants that the complainants had failed to execute the buyer's agreement that had been dispatched to the complainants for execution. The complainants were also reminded that as per the original payment plan already provided to the complainants, it was mentioned that car parking "as applicable". As a gesture of goodwill, the respondent offered allotment of car parking usage rights to the complainants at the rate of Rs 2.5 lacs instead of the prevalent rate of Rs 3.5 lacs. The complainants were called upon to remit all outstanding payment including car parking charges so as to avoid further accrual of interest on delayed payments.
- o. That buyer's agreement was eventually executed by the allottees only on 04.12.2009. That the buyer's agreement was willingly and consciously executed by the allottees after fully understanding and accepting its terms and conditions. The allottees were provisionally allotted IT/cyber space no.306 on the 3rd floor of the said project admeasuring 2500 sq. ft. approximately.
- p. That the 4th and 8th floor of the project had been identified for such allottees 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.

- q. 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 allottees 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 complainants were not prepared to make payment for such works and as such opted for a unit on 3rd floor, ear marked for leasing. Accordingly, IT space /cyber unit bearing no 306, located on the 3rd 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.
- r. 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 allottees, meant to be leased out by 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.
- s. 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 respondent. In such cases physical possession of the IT space/cyber unit is not intended to be offered to the allottee. Instead, 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 respondent, the period stipulated in the contract for delivery of possession shall not apply. The allottee in such case shall be entitled to rent paid by the lessee and shall not be entitled to possession of the cyber unit. Respondent craves leave of the Authority to refer to and rely upon the said amongst other clauses of the buyer's agreement, at the time of addressing arguments in the matter.

- t. That clause 17 provides that where an allottee is desirous of obtaining possession, in that case, 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. That 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, in such case, the allottee upon taking possession of the said premises shall not have any claim against the developer in respect of any item of work, design, specification, building material etc.
- u. That clause 4.3 of the buyer's agreement provides that the price of the IT space/cyber unit includes bare shell space, chilled water pipe upto the AHUs and single-point electric connection on each floor of the building and does not include the cost of electric fittings, internal fixtures, switches, electrical panels, electrical wiring, air handling units, fans, geysers, electric and water meters and connections etc., which shall be installed by the allottee at his/her own cost.
- v. That Clause 14 of the buyer's agreement provides that subject to timely payment of sale consideration by the allottee and subject to

delays caused due to reasons beyond the power and Authority of the developer, possession of the unit was proposed to be offered within 30 months from the date of execution of the buyer's agreement.

- w. That after competition of construction, the respondent made an application to the competent authority for issuance of the occupation certificate on 10.08.2009 and the same was issued on 13.05.2010 vide memo no ZP-193/JD(BS)/2010/6245. It is further submitted that the respondent also made an application to the competent authority on 31.07.2013 for grant of the completion certificate, which was issued vide Memo No. LC-746-JE(SJ)/2021/5106 dated 03.03.2021. That the respondent cannot be held liable for time taken by statutory authorities in issuing the occupation certificate and other approvals.
- x. That vide letter dated 17.05.2010, the complainants were informed that the building was ready for fit outs with all services in place and that occupancy/possession was expected shortly. The complainants were informed about the demand towards enhanced external development charges raised by the DTCP and that in accordance with clause 10 of the buyer's agreement, the complainants would be required to pay the said charges on pro rata basis to the extent of the allotted area.
- y. That upon receipt of the occupation certificate dated 13.05.2010, symbolic possession of the unit was offered to the complainants vide letter dated 16.08.2012. The complainants were called upon to make payment of outstanding amount as per the attached statement of account and to complete certain formalities so as to enable execution and registration of conveyance deed in favour of

the Complainants. It was also mentioned in the said letter that as a gesture of goodwill, maintenance charges had been reduced from Rs.13/- per sq. ft. to the subsidized rate of Rs.4/- per sq. ft. w.e.f. 01.10.2012 till 30.09.2013 or date of lease whichever was earlier. The complainants were further informed that post 30.09.2013 or from the date of lease of the premises, whichever was later, maintenance charges would be payable by the complainants at the prevailing rate as determined/demanded by the maintenance agency.

- z. That vide letter dated 17.04.2017, the complainants were informed that an amount of Rs.56,516/- was payable by them on account of HVAT liability. That the unit allotted to the complainants is/was intended to be leased out by the respondent on best effort basis. However, post Covid 19 pandemic, almost all corporates preferred work from home concept for their employees and consequently lesser enquiries were being received from proposed lessees. Nevertheless, the respondent has continued making sincere and earnest efforts to identify a suitable lessee. 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. In the meanwhile, the complainant was requested to clear their outstanding dues towards maintenance charges for the maintenance of the common areas and services of the project, in accordance with the buyer's agreement. The complainants were duly kept apprised by the respondent about its search for a suitable lessee.

- aa. That the respondent orally communicated to the complainants that the respondent was willing to allot another unit located on the 4th or 8th floor of the project instead of the currently allotted unit. However, in case of such re-allotment, possession of the unit in bare shell condition could not be handed over to the complainants and that the respondent was willing to construct partitions, electrical wiring, fittings, fixtures and other works necessary to make the unit suitable for self-use, provided the complainants make payment for the said work in accordance with clause 4.3 of the buyer's agreement. The complainants were also reminded that the project being a Cyber Park, the unit could only be utilized for the IT/Cyber usage purposes in accordance with the usage as permitted by Government Authorities. The complainants did not provide their consent for change of allotment and for payment for work to make the alternate unit suitable for self-use and instead orally requested the respondent to continue its efforts locate a suitable lessee for their unit.
- bb. That nothing further was heard from the complainants thereafter until the institution of the present false and frivolous complaint.
- cc. That from the averments made hereinabove it is evident that the respondent has made every effort to accommodate the complainants by offering an alternate unit on the 4th or 8th floor of the project and undertaking the requisite work to make the unit ready 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. That the respondent is not under any legal or contractual obligation to make such an offer but has done so in a spirit of goodwill. However, the said offer has not been

accepted by the complainants. There is no breach or default whatsoever that can be legitimately imputed to Bestech. The Respondent cannot be held liable for its inability, due to circumstances beyond its power and control, to locate a suitable lessee for the unit in question.

dd. That thus the allegations levelled by the complainants against the respondents are totally baseless and do not merit any consideration by the Authority. From the facts and circumstances set out in the preceding paras, it is evident that Bestech has acted strictly in accordance with the terms and conditions of the contract between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint by the complainants are fabricated and concocted with a view to justify their own breaches and lapses. The complainants are not entitled to any relief. This is without prejudice to the submission of the respondents that RERA is not applicable to the project in question and that the delay, if any, has been caused due to reasons which were wholly beyond the power and control of the respondents.

10. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority

11. 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

12. 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

13. 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.

14. 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.

G. Findings of Authority with regard to maintainability of complaint on account of complaint is barred by limitation.

15. The respondent has filed the reply on 02.04.2025, which is taken on record and raised the preliminary objection in its reply that the complaint is not maintainable being barred by limitation. It is necessary to deal with the preliminary objection before proceeding with the reliefs sought by the complainant.

16. On consideration of the documents available on record, the Authority observes that the complainant herein was allotted a unit bearing no. 306, 3rd floor, admeasuring 2500 sq. ft. super area in project of the respondent named "Bestech Cyber Park" situated at NH-9, at Sector 37, Gurugram vide allotment letter dated 25.09.2006, and an builder buyer's agreement was also executed between the complainants herein and the respondent regarding the said allotment on 04.12.2009. The occupation certificate for the subject unit has been obtained by the respondent promoter on 13.05.2010 and the symbolic possession has been offered on 16.08.2012. That numerous demand and reminder letters dated 13.07.2008, 05.11.2008, 22.01.2009, 16.06.2009, 08.12.2009, 31.01.2013, 03.04.2013, 16.08.2012 and 17.04.2017 were sent to complainant by the respondent to clear the dues. Thereafter, respondent vide notice dated 16.08.2012 called the complainant to execute the conveyance deed with regard to the unit in question. That complainant sent legal notice to the respondents on 22.11.2018 to lease out the unit and execute agreement between tenant and complainant the said legal notice was replied by the respondent vide its reply dated 28.01.2019 denying all the allegations made by the complainant in the notice and called the complainants to execute Conveyance Deed. Thereafter, on 03.03.2021 competition certificate for the project was issued. The last communication between the parties ended in 2019. Since, then complainant has never approached respondents or the Authority.
17. The complainant is seeking refund of the paid-up amount due to failure of respondent to give possession of the unit in question. That while the respondent on the other hand is pleading that the present complaint is barred by limitation as the complainant has got the symbolic offer of possession on 16.08.2012. That the cause of action if any arose on the

due date of possession i.e., 04.06.2012 and on the date of symbolic offer of possession i.e., 16.08.2012 which was made after receipt of occupation certificate on 13.05.2010. That the last communication between the parties ended in 2019. Since, then complainant has slept over her rights and has filed the present complaint after a long delay on 26.12.2024 i.e., lapsed of more than years, 13 years from the date of symbolic offer of possession i.e., 16.08.2012. Thus, the claim of the complainants is not maintainable. Both the parties through their respective counsels advanced submissions with regard to the maintainability of the complaint on the ground of the limitation.

18. In line with the aforesaid facts and submissions made by the parties and documents placed on record, the Authority observes that the unit was allotted to the complainant on 25.09.2006, a buyer's agreement in this regard was executed on 04.12.2009. Though the possession of the unit was to be offered on or before 04.06.2012 after obtaining the occupation certificate of the subject unit but the same was offered only on 16.08.2012 after receipt of occupation certificate on 13.05.2010. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

19. In the present matter the cause of action arose on 16.08.2012 when the symbolic possession was offered to the complainant by the respondent. The complainant has filed the present complaint on 26.12.2024 which is 12 years, 4 months, 11 days from the date of cause of action. The three-year period of delay in filing of the case ended on 16.08.2015. In view of the above, the Authority is of the view that the present complaint has not been filed within a reasonable time period and is barred by the limitation.
20. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits before execution of conveyance deed.
21. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. 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.
22. In the light of the above stated facts and applying aforesaid principles, the Authority is of the view that the present complaint is not maintainable after such a long period of time. 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 is not maintainable and the same is declined

23. This decision shall mutatis mutandis apply to both the cases mentioned in para 3 of this order.
24. Complaint stands disposed off.
25. File be consigned to registry.



(Phool Singh Saini)
Member

Haryana Real Estate Regulatory Authority, Gurugram
09.12.2025



(Arun Kumar)
Chairman

HARERA
GURUGRAM