

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

Complaint no.: 6321 of 2024
Date of decision: 16.12.2025

Ashish Gupta
R/o: Gai Peerji Wali Near Geeta Bhawan,
Sirsa, Haryana.

Complainant

Versus

1. M/s. BPTP Limited.

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

2. M/s. Countrywide Promoters Private Limited.

Registered Office at: 28, ECE House, First Floor, K.G
Marg, New Delhi-110001.

3. Business Park Maintenance Services Private Limited.

Office at: M-11, Middle Circle, Cannaught Circus, New
Delhi-110001.

4. Deewan Housing and Finance Corporation Limited
Through its branch manager.

Office at: 201, Second Floor, Vipul Agora, M.G Road,
Gurugram-122002.

Respondents

CORAM:

Arun Kumar
Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Vinay Gaur (Advocate)
Harshit Batra (Advocate)
None

Complainant
Respondent no.1 and 3
Respondent no. 2 and 4

1. The present complaint has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the 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 of project	“Visionnaire”
2.	Nature of project	Residential villas
3.	Location of project	Sector-70, Gurugram.
4.	DTCP License	License no. 15 of 2011 Dated-07.03.2011
5.	RERA registered	Not Registered
6.	Allotment Letter	24.04.2014 (As on page no. 138 of reply)
7.	Villa Buyer's Agreement [Between BPTP Limited, Countrywide promoters(Landowner)]	01.04.2014 (As on page no. 42 of complaint)
8.	Villa no.	B-88 (As on page no. 48 of complaint)
9.	Villa area	5931 sq.ft. [Built up area] (As on page no. 48 of complaint)
10.	Possession clause	Clause 1.5



		<p>“Commitment Period”</p> <p><i>Shall mean, subject to Force Majeure circumstances, intervention of statutory authorities and Purchaser(S) having timely complied with all its obligations, formalities and/or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of all instalments of the sale consideration as per the payment plan opted, the Seller/Confirming Party shall offer the possession of the Semi-Furnished Residential Villa/unit to the Purchaser(S)</i></p> <p><i>within a period of 36 months from the date of execution of the Villa Buyer's Agreement.</i></p> <p>Clause 1.15</p> <p>“Grace Period”</p> <p><i>Refers to the additional period of 180 days after the expiry of the Commitment Period for making the offer of possession of Unit.</i></p> <p><i>[Emphasis supplied]</i></p>
11.	Due date of possession	01.10.2017 [Calculated 36 months from date of execution of the agreement+ 180 days]

12.	Basic Sale consideration	Rs.4,28,79,418/- (As on page no. 48 of complaint)
13.	Amount paid	Rs.4,05,40,532.87/- (As per Statement of Accounts on page no. 199 of reply)
14.	Tri-partite agreement executed between M/s BPTP and Countrywide Promoters Pvt Ltd. with Dewan Housing Finance Corporation limited]	30.06.2019 (As on page no. 65 of complaint) [Note: An amount of Rs.3,53,50,000/- was sanctioned]
15.	Occupation certificate	18.11.2021
16.	Offer of possession	25.05.2022 (As on page no. 196 of reply)
17.	Substitution of name of Mrs. Shruti Gupta	07.09.2022 (As on page no. 62 of reply)
18.	Conveyance Deed in favor of Mrs. Shruti Gupta	21.04.2023 (As on page no. 218 of reply)
19.	Letters sent by respondent that the unit is ready for possession	22.05.2024 25.06.2024 (As on page n. 244-245 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - I. That the respondent no. 1 is a partnership firm involved in the business of real estate development which proclaims and professes to the public at large to be a prominent and reputed real estate firm engaged in developing real estate projects with the intent to deceive the innocent general public.

II. That the complainant who is owner of the unit bearing number no. B-88 in Visionnaire project, Sector-70, Gurugram purchased from respondent no. 1 for his residential purpose and thus falls within the definition of allottee.

III. That the respondent no. 3 as a part of their business venture decided to develop a Residential Villas under the name and style of "Visionnaire" by BPTP situated in Sector-70, Gurugram. That the complainant booked a Villa in the project on 17.01.2014 and paid an amount of Rs.8,00,000/- . The respondent no. 1 has also issued an allotment form called booking form with the complainant on 17.01.2014.

IV. That the complainant entered into an agreement dated 01.04.2014 with the respondent no. 1 whereby a unit bearing number/villa no. B-88 was allotted to the complainant. The total price of the said semi-furnished unit was fixed at Rs.5,03,14,035.80/- for the saleable area of 5931 sq. ft.

V. That the complainant earlier deposited an amount of Rs.77,00,000/- after booking and before entering into an Agreement from the complainant. As per clause 5 of the Agreement dated 01.04.2014, the respondent promised to deliver the possession within the Commitment Period (i.e., 36 months) and additionally entitled to a grace period of 180 days from the date of execution of the above-said agreement.

VI. That respondent no. 1 has also mentioned in clause 6 of the buyer's agreement that if the seller/confirming party fails to offer the possession of the said unit to the purchasers within the commitment

period and after expiry of grace period thereof, it shall be liable to pay delayed compensation.

VII. That despite promising several times and despite the written commitments made in the buyer agreement, respondent no. 1 failed to deliver the possession as promised and a new date for the delivery of the unit was informed to the complainant whenever the complainant visited their office.

VIII. That the respondent no. 1 has not received any completion certificate from the Haryana Country Town Planning Department till date nor a calculation certificate from the Government Architect.

IX. That aggrieved by the act and conduct of respondent no. 1 and false promises made by respondent no. 1, the complainant moved before the Hon'ble National Consumer Dispute Redressal Commission by way of filing a complaint bearing no. CC/1725 of 2018 titled "*Ashish Gupta vs. BPTP Limited and Another*". In the complaint filed by the complainant before the National Consumer Dispute Redressal Commission, notice was issued to respondent no. I by the Hon'ble Forum and upon receiving of the said notice respondent no. I appeared and filed their written statement before the Hon'ble Commission.

X. It is pertinent to mention here that respondent no. 1 admitted that it had failed to deliver the possession of the villa because the said villa was not constructed completely. Thereafter, the respondent no. 1 agreed with the complainant to deliver the possession of the said villa and therefore, the said complaint was amicably resolved between the parties, and a settlement deed dated 16.06.2022 was executed by both the parties wherein the respondent gave a special credit of Rs.80,08,394/- and the respondent no. 1 also promised to deliver the

physical possession of the villa to the complainant within 90 days from the date of the said settlement deed.

XI. Thereafter, a possession letter dated 18.02.2023 was sent by the respondent no. I to the complainant. However, when the complainant visited the site, he was shocked to see that the villa of the complainant had been used as a temporary office space by respondent no. 1 and his team without taking the consent of the complainant. It is further submitted that on the one hand respondent no. 1 is sending possession notices and on the other, respondent no. 1 and his team are misusing the complainant's villa without his prior consent or permission.

XII. Despite receiving the possession letter on 18.02.2023, the complainant has discovered that his villa has been used as a temporary office space by respondent no. 1 and his team without his consent. Additionally, the complainant has been continuously asked to provide maintenance while the property was in your possession, despite no longer having any contractual obligation to do so.

XIII. That the complainant has also received a Tax Invoice of Maintenance charges dated 09.04.2024 in which the respondent no. 1 to 3 have raised Rs.2,37,481/- as the total amount outstanding to date.

XIV. That the possession letter was issued to the complainant on 18.02.2023. However, it is pertinent to mention here that in reality, the complainant has never been offered/ provided the actual physical possession of his unit and only a notional possession was offered and provided to eyewash the complainant.

XV. That upon physical inspection of the unit, the complainant came to know that the unit is not near completion and the respondents have played fraud upon the complainant, and apart from that they have also

issued a tax invoice of Rs.2,37,481/- in lieu of the maintenance charges whereas no physical possession of the villa has been given to the complainant till date.

XVI. That the complainant and respondent no. 1 entered into a settlement deed dated 16.06.2022 wherein it was promised by respondent no. 1 that the possession of the villa would be handed over to the complainant within a period of 90 days from the date of execution of the settlement deed dated 16.06.2022. However, till date no physical possession has been given by respondent no. 1 to the complainant. Therefore, the respondent no. 1 has made false promises to the complainant due to which the complainant agreed to withdraw his complaint before the Hon'ble National Consumer Dispute Redressal Commission.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent no. 1 to complete the construction of the villa and provide actual physical possession to the complainant and not notional possession in the Unit as provided under the RERA Act;
 - ii. Alternatively, refund the amount deposited by the complainant along with interest and compensation in terms of Section 18 of the Act or Alternatively, refund the amount deposited along with interest and compensation.
5. Vide proceedings dated 01.10.2025, the respondent no.2 i.e., M/s. Countrywide Promoters Private Limited and respondent no. 4 i.e., Deewan Housing and Finance Corporation Limited was proceeded against ex-parte.

D. Reply on behalf of respondent no.1 i.e., M/s. BPTP Limited and respondent no.3 i.e., Business Park Maintenance Services Private Limited.

6. The respondent no.1 and 3 has made the following submissions:

I. That the complainant had previously filed a complaint before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi in complaint bearing no. 1725 of 2018 in a complaint titled as "Ashish Gupta v. BPTP Ltd and Anr.", seeking the relief of delayed possession charges, legal possession of the villa *inter alia*.

II. That during the pendency of the complaint before NCDRC, the parties had arrived at a full and final settlement, and a Settlement Deed dated 16.06.2022 was executed between both the parties and the case before the NCDRC was disposed vide final order dated 18.11.2022.

III. That according to the Settlement Deed, the respondents in good faith and as a goodwill gesture given a special credit of Rs.80,08,394 to the complainant and out of the total dues of Rs.1,60,31,818.13/-, the complainant undertook to make payment of the pending amount of Rs.80,23,424.13 by 30.06.2022 along with the IFMS amount of Rs.3,27,700, One-year common area maintenance charges amounting to Rs.2,73,774 and administrative charges of Rs.16,520. Furthermore, the complainant acknowledged that he had visited and inspected the actual site and is fully satisfied with the current physical status of the unit.

IV. That the said Agreement was executed as a full and final settlement of all claims, contentions of the Complainant after which the Complainant has withdrawn the complaint filed before the NCDRC.

V. That after the settlement of the matter and the execution of the

settlement deed, no cause of action for filing the present complaint remains. The parties agreed also that any disputes arising in the future shall be mutually resolved between the parties through arbitration. Hence, the complaint is not maintainable before the Authority. On the basis of the above, it is most humbly submitted that after the execution of the Settlement Deed, no cause of action pertains. Hence, in light of the same, the present complaint is liable to be dismissed.

VI. That the parties agreed also that any disputes arising in the future shall be mutually resolved between the parties through arbitration. Hence, the complaint is not maintainable before the Authority. It is submitted that the Settlement agreement is a part of the order of NCDRC, as per order dated 18.11.2022. That the order dated 18.11.2022 forms a compromise deed within the meaning of the Order XXIII Rule 3 and 3A of the Code of Civil Procedure, 1908. That any challenge being made to the settlement deed, which was recorded in the order of the NCDRC, can only be made before the court recording such a compromise between the parties. Hence, in light of the settlement deed being recorded by NCDRC, the present case is barred by provisions of Order XXIII Rule 3 and 3A, CPC.

VII. That the present complaint filed by the Complainant is not maintainable in the eyes of law for the reason of "*Mis-joinder of party*" and "*Non-joinder of necessary party*" and is liable to be dismissed under order VII Rule 11(a) of CPC read with section 38 of the RERA Act.

VIII. That the present complaint has been filed Mr. Ashish Gupta, who is the original allottee of the unit. However, the name of Mr. Ashish

Gupta was substituted with the name of Mrs. Shruti Gupta. Currently the unit stands in the name of Mrs. Shruti Gupta and Mr. Ashish Gupta is no longer an allottee of the unit in question and does not fall under the definition of "allottee" under the RERA Act, hence, he does not have the *locus standi* to file the present complaint.

IX. That the complainant being interested in the real estate development of respondent no. 1, known under the name and style of "Visionnaire" located at Sector 70-, Gurugram, Haryana booked a unit in the said project. Consequently, a villa bearing no. B-88 tentatively admeasuring 374 sq. yds was allotted to the complainant vide Allotment Letter dated 24.01.2014.

X. That subsequently, a Villa Buyer's Agreement dated 01.04.2014 was executed between the parties. Subsequently, the allottees took a home loan against the unit and Respondent No. 1 issued permission to mortgage dated 30.06.2014 to the Dewan Housing Finance Corporation Limited and thereafter, the parties entered into a Tripartite Agreement dated 30.06.2014.

XI. It is submitted that as per the Tripartite Agreement dated 30.06.2014, respondent no. 1 had to obligation to make payment of the Pre-EMI till 30.11.2015. The complete Pre-EMI has been paid by respondent No. 1. The details of the same are as under:

Adjustment in Demand	Rs. 23,24,991
First Disbursement Credit- As evident from letter dated 16.07.2014	Rs. 18,96,614
PRE EMI Paid	Rs. 45,55,542

XII. That as per clause 5.1 r/w clause of the Agreement, Respondent No. 1 proposed to hand over the possession of the unit within a period of 36 months from the date of execution of the Agreement with a grace period of 180 days. Hence, the **proposed** due date of possession

comes out to be 01.10.2017. It is most humbly submitted that the proposed due date 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 respondent no. 1 in accordance with clause 10 of the Agreement.

XIII. That, at this stage, it is categorical to note that respondent no. 1 was faced with certain *force majeure* events including but not limited to the non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. 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 were 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 the procurement of materials 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 respondent no. 1 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, respondent no. 1 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 the passing of the subjective due date of offer of possession. Additionally, even before normalcy could resume, the world was hit by the COVID-19 pandemic. The COVID-19 pandemic resulted in serious challenges to the project with no available laborers, contractors, etc. for the construction of the project.

XIV. That despite the default caused, the respondent no. 1 applied for an Occupation Certificate in respect of the said unit on 22.01.2021 and the same was thereafter issued vide memo bearing no. 12122 dated 18.11.2021. It is pertinent to note that once an application for the grant of an Occupation Certificate is submitted for approval in the office of the statutory authority concerned, respondent no. 1 ceases to have any control over the same. The grant of sanction of the Occupation Certificate is the prerogative of the statutory authority concerned, over which respondent no. 1 cannot exercise any influence.

XV. That even after the defaults of the complainant, respondent no. 1 completed the construction of the unit and offered possession of the unit to the complainant on 25.05.2022 and earnestly requested the

complainant to take possession of the unit after remittance of the balance sales consideration of the unit. It is submitted that the complainant delayed in taking the possession of the unit and finally the complainant took the possession of the unit on 18.02.2023 and the respondent issued letter for NOC for fit out dated 18.02.2023.

XVI. That it is submitted that the unit had been handed over to the complainant and the Conveyance Deed dated 21.04.2023 has been executed between the parties. As per the Clause 3 of the Conveyance Deed, it is categorically noted that the complainant took over the physical possession of the said unit only after complete inspection and only after being completely satisfied with the unit.

XVII. That after the execution of the Conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainant with respect to the Agreement or any obligation of the parties including delay compensation.

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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the Authority:

8. 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

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee 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 complainant at a later stage.
12. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."** SCC Online SC 1044 decided on 11.11.2021 and followed in **M/s Sana Realtors Private Limited & others V/s Union of India & others SLP**

(Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudicating compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. and M/s Sana Realtors Private Limited & others V/s Union of India & others (supra)**, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by him.

F. Findings on objections raised by the respondent no.1 and 3:

F.I Objection regarding maintainability of the complaint for the reason of "Misjoinder of party" and "Non-Joinder of necessary party".

14. The respondent no.1 and 3 has raised an objection that the present complaint has been filed by Mr. Ashish Gupta, who is the original allottee of the unit, however, the name of Mr. Ashish Gupta was

substituted with the current allottee namely Mrs. Shruti Gupta. The subject unit is in name of Shruti Gupta and Ashish Gupta is no longer an allottee of the unit in question and does not fall in the definition of "Allottee" under the Act, 2016.

15. The Authority is of the view that the complainant being interested in the project "Vissionnaire" located at Sector-70, Gurugram, Haryana, booked a unit. A villa bearing no. B-88 tentatively admeasuring 374 sq. yards was allotted to the complainants vide Allotment Letter dated 24.01.2014. Subsequently, a Villa Buyer's Agreement dated 01.04.2014 was executed between the parties. The name of Mr. Ashish Gupta was substituted with the name of Mrs. Shruti Gupta and the name of Mrs. Shruti Gupta was endorsed with effect from 07.09.2022. The Conveyance Deed was executed in favour of Mrs. Shruti Gupta on 21.04.2023. The complaint has been filed by Mr. Ashish Gupta who is the erstwhile allottee and thus, is not entitled to file the present complaint.
16. The complaint is dismissed for the misjoinder of party and non-joinder of the necessary party.
17. File be consigned to registry.



(Phool Singh Saini)
Member



(Arun Kumar)
Chairman

Dated: 16.12.2025
Haryana Real Estate Regulatory Authority, Gurugram