

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**Date of filing of complaint: 25.02.2025  
Date of decision : 12.03.2026

NAME OF BUILDER		M/S BPTP LIMITED	
PROJECT NAME		"PARK TERRA" Situating at Sector 37D, Gurugram	
Sr. No.	Case No.	Case title	APPEARANCE
1.	CR/845/2025	Salaj Ahlawat V/S M/s BPTP Limited	Ms. Anuruddha Singh and Mr. P.K. Rai (Advocates) Mr. Harshit Batra (Advocate)
2.	CR/846/2025	Salaj Ahlawat V/S M/s BPTP Limited	Ms. Anuruddha Singh and Mr. P.K. Rai (Advocates) Mr. Harshit Batra (Advocate)

**CORAM:**

Shri Phool Singh Saini

Member

**ORDER**

1. This order shall dispose of both the complaints titled as 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, "Park Terra" being developed by the same respondent-promoter i.e., "M/s BPTP Limited."



3. The details of the complaints, status of reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given below:

<b>Project Name and Location</b>	"Park Terra" at Sector - 37C, Gurugram, Haryana	
<b>Project area</b>	43 acres	
<b>Nature of the Project</b>	Group Housing Tower	
<b>DTCP License No.</b>	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
<b>Validity upto</b>	04.04.2025	23.10.2019
<b>Name of Licensee</b>	Super Belts Pvt. Ltd. & 4 others	Countrywide Promoters Pvt. Ltd. & 6 others
<b>RERA Registered or Not Registered</b>	Registered vide registration no. 299 of 2017 dated 13.10.2017 valid upto 12.10.2020	
<b>Occupation certificate</b>	24.08.2022	

Sr. No.	Complaint No., Case Title, Date of filing of complaint and reply status	Unit no. and size	Date of allotment and execution of BBA	Basic Sale Price (BSP) / Total Amount paid by complainant	Due date /Offer of possession (OOP)
1.	CR/845/2025  Salaj Ahlawat Vs. M/s BPTP Limited  DOF: 25.02.2025 Reply: 30.07.2025	T20-803, 8 <sup>th</sup> Floor, Tower T20 admeasuring 1691 sq. ft. (Page 26 of Complaint)	Allotment Letter dated 06.12.2012 (Page 16 of Complaint)  BBA dated 29.12.2012 (Page 17 of Complaint)	BSP-₹88,77,750/- (Page 27 of complaint)  AP-₹18,12,109/- (As per receipts annexed at page 49-50 of complaint)	<b>Due Date:</b> 29.12.2016  <b>OOP:</b> Not Offered  <b>Surrender Request</b> dated 09.01.2014 (Page 55 of Complaint)
2.	CR/846/2025  Salaj Ahlawat Vs. M/s BPTP Limited  DOF: 25.02.2025 Reply: 30.07.2025	T21-1101, 11 <sup>th</sup> Floor, Tower T21 admeasuring 1691 sq. ft. (Page 51 of Reply)	Allotment Letter dated 10.12.2012 (Page 17 of Complaint)  BBA dated 29.12.2012 (Page 42 of Reply)	BSP-₹88,77,750/- (Page 52 of reply)  AP-₹18,12,109/- (As per receipts annexed at page 51-52 of complaint)	<b>Due Date:</b> 29.12.2016  <b>OOP:</b> Not Offered  <b>Surrender Request</b> dated 09.01.2014 (Page 57 of Complaint)

**The complainant herein is seeking the following relief:** Direct the respondent to refund the total amount of Rs.18,12,109/- along with MCLR + 2% interest p.a. till the date of payment to the complainant.

**Note:** In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation	Full form
DOF	Date of filing of complaint
BBA	Builder Buyer Agreement
BSP	Basic Sales Price
AP	Amount paid by the allottee/s
OOP	Offer of Possession

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/845/2025 titled as "Salaj Ahlawat Vs. M/s BPTP Limited"** are being taken into consideration for determining the rights of the parties.

**A. Project and unit related details**

5. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details	
1.	Name of the project	"BPTP Terra", Sector-37D, Gurugram, Haryana	
2.	Project area	43 acres	
3.	Nature of project	Group Housing Tower	
4.	<b>DTPC License no.</b>	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
	Validity Up to	04.04.2025	23.10.2019
	Name of licensee	Super Belts Pvt. Ltd. & 4 others	Countrywide Promoters Pvt. Ltd. & 6 others
5.	RERA registered /not registered	Registered vide registration no. 299 of 2017 dated 13.10.2017	
	Validity status	Valid up to 12.10.2020	
6.	Allotment letter	06.12.2012 (As on page no. 16 of complaint)	



7.	Unit no.	T20-803, Floor-8 <sup>th</sup> , Tower-T20 (As on page no. 26 of complaint)
8.	Unit area admeasuring	1691 sq. ft. [Super Built-up Area] (As on page no. 26 of complaint)
9.	Date of execution of buyer's agreement	29.12.2012 (As on page no. 17 of complaint)
10.	Possession clause	<p><b>Clause 1.6 Commitment Period shall mean subject to Force majeure circumstances: intervention of statutory authorities and purchaser(s) having timely complied with all its obligations formalities or documentation as prescribed/ requested by seller/ confirming party, under this agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp duty and other charges, the seller/ confirming party shall offer the possession of the unit to the not purchaser(s) within period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement whichever is later.</b> (Page no. 24 of the complaint)</p> <p><b>5. Possession and Holding Charges:</b> 5.1 The Seller/confirming party proposes to offer possession of the unit to the Purchaser(s) within the Committed Period. The seller /confirming party shall be additionally entitled to a grace period of 180 days after expiry of the said committed period for making offer of possession of the said unit. (Page no. 31 of the complaint)</p>
11.	Due date of possession	29.12.2016 (Calculated 42 months from date of execution of buyer's agreement plus 180 days grace period)
12.	Sale consideration	Rs.88,77,750/- (As per BBA on page no. 27 of complaint)
13.	Amount paid by the complainant	Rs.18,12,109/- (As per receipts annexed at page no. 49-50 of complaint)

*Bz*



14.	Occupation certificate	24.08.2022 (As per page no. 85 of the reply)
15.	Offer of possession	Not available
16.	Reminder to clear outstanding dues	Payment request letter dated 06.12.2012, Reminder letters dated 27.12.2012, 28.01.2013, 28.02.2013 and Final Reminder dated 02.04.2013 (As per page no. 69-81 of the reply)
17.	Termination Letter	22.05.2013 (On failure to clear the outstanding dues) (As per page no. 82 of the reply)
18.	Surrender request by complainant	09.01.2014 (As per page no. 55 of complaint)
19.	E-mail sent by respondent to complainant	05.10.2016 "....We are pleased to inform you that over the last few months we have accelerated the construction in the project. As a goodwill gesture, we are offering customers who have not paid their dues against their units, a <b>one-time limited offer to restore terminated unit by remitting the total dues along with applicable interest till date.</b> To avail this one time offer you are requested to please get in touch within the next 10 days...." (As per page no. 84 of the reply)
20.	E-mail sent by complainant to respondent in response to mail dated 05.10.2016	E-mail dated 13.10.2016 ".....Subsequently I paid instalments (shown above) but unfortunately after <b>that I could not pay the instalments as my father became very sick and he had to be hospitalized.</b> He is a 74-year-old man and lot of money was spent on his treatment and as a result I asked for the refund against these two units which I mentioned to you in the earlier emails (18/04/2016). I have submitted the medical reports of my father. I paid a number of visits to your office located in Gurgaon (BPTP Crest, Plot No, 15, Udyog Vihar Phase 4, Near Airtel Building, Gurgaon, Haryana 122015) for the refund but till date nothing has been done.

	<p><i>I would again like to bring to your kind notice that due to his suffering from various ailments he is frequently in and out of the hospital and <b>still a lot of money is being spent on his treatment so I am unable to pay instalments</b> as I had earlier mentioned in my previous emails. I humbly request you to <b>kindly refund my money against these two units on this compassionate ground.</b></i></p> <p>(As per page no. 58-59 of the complaint)</p>
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**B. Facts of the complaint**

6. The complainant/allottee has made the following submissions:
- a) That the complainant booked the Unit bearing number Unit No. T-20-803 super area admeasuring 1691 sq. ft. in the project named "TERRA" on 12.08.2012 under PLP Plan and a booking application form has been submitted by the complainant which is duly accepted by the respondent and accordingly a booking payment of Rs. 6,00,000/- has been made by the complainant to the respondent.
  - b) That it is pertinent to mention here that the complainant booked two units that is Unit No. T-20/803 and Unit No. T-21/1011 in the same project "TERRA" having the same size admeasuring 1691 sq. ft. and having the cost of Rs. 1,09,95,306 and 1,03,73,864/- separately.
  - c) That after the booking of the unit, an allotment letter dated 06.12.2012 and buyer's agreement dated 29.12.2012 has been executed on between the respondent and the complainant. That as per clause 1.6 & clause 1.18 of buyer's agreement, the respondent promised to handover the possession of the Unit within 42 + 6 (Six months of Grace Period) from the date of execution of the agreement 29.12.2016.



- d) That it is pertinent to mention here that till date the complainant has paid a total sum of Rs. 18,12,109/- against the total sale consideration of Rs. 1,09,95,306/-, duly as per payment plan by August 2012. The complainant stopped making payment to the respondent due to the medical bills for the complainant's father treatment which were extremely high and was only priority at that moment. Despite the complainant best efforts to manage both medical costs and the instalments of his flat the complainant couldn't pay the further instalments.
- e) That the complainant had notified the respondent about his financial hardship. The complainant's father is undergoing critical medical treatment for heart disease and has undergone two angioplasties. The cost of these treatments along with ongoing hospital expenses have severely impacted the ability of the complainant to meet his financial obligations, because the medical bills for his father's treatment have been extremely high and these are the only priority at that moment, despite the complainant best efforts to manage both medical cost and the instalments of his flat. The complainant had been unable to pay the further instalments towards their flat due to the diversion of funds to cover his medical care.
- f) That the complainant has made a formal request to the respondent via a handwritten application dated 13.08.2014, seeking the merger of two units into one unit for the purpose of a higher merger under the PLP Plan, and adjust the amount paid towards one unit in the final unit. The complainant was repeatedly assured by the



respondent that the issue was under consideration or could be resolved, these repeated assurances created an expectation. However, it came as a complete shock to the complainant when the respondent formally denied the request to merge the two units into one unit.

- g) That all of the available funds of the complainant have been exhausted in covering the substantial medical expenses for the treatment of the complainant's father, who is suffering from a heart condition and has undergone two angioplasties. As a result, the complainant is facing significant financial constraints and was relying on the merger for some relief in the current situation.
- h) That during these months the complainant was repeatedly assured by the respondent that merger request would be favourably considered, these assurances led the complainant to believe that the merger would proceed regardless of the outstanding dues. At no point in our communication was the complainant informed that outstanding dues would prevent the processing of merger request, the sudden denial of the complainant request after months of assurances has caused significant distress, particularly in view of the financial hardships due to medical treatment of his father.
- i) That the respondent vide its termination/cancellation intimation letter dated 22.05.2013 cancelled the unit of the complainant after denying all the genuine request of the complainant and his financial hardship.
- j) That the complainant sent an email dated 18.09.2013 and 09.01.2014 to the respondent asking for refund of its amount of Rs. 36,24,218/- paid towards both the unit. The complainant made

multiple communication seeking refund, but till date no action has been taken by the respondent in this regard and not a single penny has been refunded till date to the complainant.

- k) That the complainant is intimated by the respondent via email on 23.09.2013 that if the complainant opts to surrender the booked unit, then the earnest money which is about 15 percent of the total consideration shall be deducted from the total payment amount. That the complainant duly requested to refund the amount after cancellation of the unit but the respondent did not pay any heed to the complainant request.
- l) That the respondent again vide its email dated 18.10.2016 acknowledged for refund of amount but failed to refund the amount to the complainant.
- m) The respondent by now have earned interest of Rs. 20 Lakh (9% simple interest for 12 years as payment was made in the year 2012) approximately on the amount deposited by the complainant towards the unit in question.
- n) That the Project "TERRA" as registered with HRERA on 13.10.2017 vide registration number 299 OF 2017 dated 13.10.2017. The OC for the Tower No. T20, T21, T24 & T25 including basement obtained on 24.08.2022 by the Respondent but there is no Completion Certificate (CC) of the project has been obtained by the respondent till date. As per law, the Completion Certificate (CC) is a mandatory document that confirms that all construction work has been completed according to approved plans, building codes, and safety standards, without Completion Certificate (CC), the property cannot be deemed fully completed or legally occupied.



o) That it is very pertinent to mentioned here that as per The Real Estate (Regulations and Development) Act, 2016 and The Haryana Real Estate Regulatory Authority, Gurugram (Registration of Projects), Regulations 2018, the promoters can't charge more than 10 percent of the cost of the flat/apartment as earnest money whereas the respondent has demanded 15 percent payment from the complainant as the earnest money which is clearly violation of the provisions of the RERA Act and HRERA Regulations.

**C. Relief sought by the complainants:**

7. The complainant has sought following reliefs:

I. Direct the respondent to refund the total amount of Rs.18,12,109/- along with MCLR + 2% interest p.a. till the date of payment to the complainant.

8. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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 contested the complaint on the following grounds.

a) That the complainant, being interested in the group housing project of the respondent known under the name and style of "Terra", situated at Sector 37D, Gurugram, Haryana (the "Project"), applied for the purchase of a unit in the above-noted project and in furtherance of the same the complainant executed an application form dated 13.08.2012. The complainant was allotted a unit bearing no. T20-803 on the 8<sup>th</sup> Floor, Tower T20, tentatively



admeasuring a super area of 1090 sq. ft. vide allotment letter dated 06.12.2012.

- b) That thereafter, the buyer's agreement was executed on 22.11.2012 between the parties. It is pertinent to mention that the Agreement was consciously and voluntarily executed between the parties, and the terms and conditions of the same are binding on the Parties.
- c) That being a contractual relationship, reciprocal promises are bound to be maintained. It is respectfully submitted that the rights and obligations of the purchaser as well as the builder are completely and entirely determined by the covenants incorporated in the Agreement, which continues to be binding upon the parties thereto with full force and effect.
- d) That the remittance of all amounts due and payable by the complainant under the agreement, as per the schedule of payment incorporated in the Agreement, was of the essence under Clause 7.1 of the Agreement.
- e) The complainant had defaulted/delayed in making the due payments, upon which, reminders and notices were also served to the complainant. That the bonafide of the respondent is also essential to be highlighted in this instance, who had served a number of request letters and reminders to the complainant to ensure that the payments are made in a timely fashion. A list of the Payment Request Letters, Payment Request Reminders, and Notices is as under:

S. No.	Particulars	Dated	Due Date
1.	Payment Request "within 45 days of booking"	05.10.2012	20.10.2012
2.	Payment Request "on or	06.12.2012	21.12.2012



	before 90 days or excavation"		
3.	Receipt	18.10.2012	
4.	Reminder Notice- I	27.12.2012	Immediate
5.	Reminder Notice- II	28.01.2013	Immediate
6.	Reminder Notice- III	28.02.2013	Immediate
7.	Final Demand Notice	02.04.2013	7 days

- f) That the complainant is a habitual defaulter who has been in default of payments since the very beginning, as is evident from the table above. The complainant had made the last payment on 18.10.2012 and thereafter stopped making payments of the instalments. The complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent. It is submitted that the respondent issued a final demand notice for payment of outstanding dues to the complainant on 02.04.2013, wherein it was specifically mentioned that the complainant was given the last and final opportunity to make payment of the outstanding dues within 7 days from the date of this notice.
- g) That in such a circumstance, the respondent had a right to cancel the unit and forfeit the earnest money, accrued interest, brokerage, along with other non-refundable amounts as per the clause 7.1 of the Buyer's Agreement.
- h) That in accordance thereto and after continued default of the complainant, the Unit was finally cancelled on 22.05.2013. It is submitted that the earnest money, brokerage, accumulated interest, and statutory dues stand forfeited, and the complainant has no right, title, or interest in the unit in question.
- i) That without prejudice to submissions of the respondent with regard to the limitation, it is most vehemently submitted that the



allotment of the unit of the complainant was cancelled legally and validly as per the agreed terms and conditions of the Agreement hence, the respondent is entitled to deduct the earnest money, i.e. 15% of the cost of property, non-refundable amounts and other amounts in terms of agreement.

- j) That without prejudice to the aforementioned and the rights of the respondent, it is submitted that as the cancellation of the unit was before the RERA Act hence, the earnest money shall also be as per the clauses of the Buyer's Agreement was in force prior to the termination of the Unit and the RERA Act. That in the present case, the earnest money is 15% of the total consideration charges, which was willingly and voluntarily agreed upon between the parties.
- k) That the respondent has already transferred the ownership of the Unit to a third-party as the Unit has been sold to Mr. Akhilesh Kumar Jha and Mrs. Anita Jha, who enjoys the complete rights and ownership over the Unit via conveyance deed hence, any relief against the said Unit cannot be imposed upon the respondent as the respondent has no right or title over the said Unit.
- l) That in light of the present facts and circumstances, the Authority has no jurisdiction in the present matter, and without prejudice to such stand of the respondent, it is also submitted that the matter cannot be considered on merits as the claim of the complainant is barred by limitation.
- m) No vested right of the complainant existed at the time of implementation of RERA, 2016 or the HRERA Rules, 2017, and hence, this Ld. Authority cannot retrospectively adjudicate upon the cancellation of the Unit: That it is a settled principle of law that

the effect of the RERA, 2016 is retroactive in nature and hence, the rules formed thereunder can also only be retroactively applicable. That the RERA, 2016, completely (essentially, sections 3 to 19) came into force on force on 01.05.2017 vide Memo No. S.O. 1216(E), dated 19.04.2017. The HRERA Rules, 2017 were implemented on 28.07.2017 vide memo No. No. MISC-107(A)/ED(R)/196. However, as noted above, the cancellation of the unit was effected on 22.05.2013, i.e., prior to the implementation of the RERA Act, 2016, or the HRERA Rules, 2017, and no right of the parties remained thereafter. The relationship between the parties was concluded on such date, and no amount remained payable by either party to the other.

- n) Applicability of the principle of delays and latches and limitation in RERA: Case filed after a delay of approximately 12 years: It is an established principle of law that the law assists those who are vigilant to protect their rights. The Doctrine of Delay and Latches provides that all claims should be brought before the respective courts/forums within a reasonable time frame, and no litigant who approached court/forum belatedly without any justifiable explanation should be allowed to seek benefit of his negligence, similar genesis flows from the provisions of Limitation Act, 1963.
- o) That it is submitted that after such cancellation of the unit of the complainant vide Termination Letter dated 22.05.2013, no cause of action remains. The present is filed on 25.02.2025. The present complaint has been filed after a delay of 11 years, 9 months and 3 days. The present complaint is grossly barred by limitation, should be dismissed. That no individual should be allowed to take

recourse of law at his own whims and fancies. That the Authority has taken note of the same and has barred the complaint on the basis of limitation.

10. All other averments made in the complaint were denied in toto.
11. On the date of hearing, the Authority explained to the respondent 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.

**E. Jurisdiction of the Authority:**

12. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial Jurisdiction:**

13. 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:**

14. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

***Section 11(4)(a)***

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

15. 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.
16. 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. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs 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 adjudging 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."*

17. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**F. Findings on the objections raised by the respondent.**

**F.1 Objections regarding complaint being barred by limitation.**

18. The respondent contended that the present complaint is not maintainable and barred by the law of limitation. The Authority observes that the cause of action arose on 22.05.2013, when the cancellation letter was issued to the complainant. However, post cancellation of the unit, the respondent has failed to refund the refundable amount to the complainant so far, which clearly shows a subsisting liability. Thus, the cause of action is continuing till date and recurring in nature. The authority relied upon Section 22 of the Limitation Act, 1963, "Continuing breaches and torts" and the relevant portion of the same is reproduced as under for ready reference: -

**22. Continuing breaches and torts-**

*In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.*

19. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint being barred by limitation is hereby rejected.

**G. Findings on the relief sought by the complainant**

**G.I Direct the respondent to refund the total amount of Rs.18,12,109/- along with MCLR + 2% interest p.a. till the date of payment to the complainant.**

20. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him along with

interest at the prescribed rate as provided under Section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

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

***(Emphasis supplied)***

21. Clause 1.6 read with clause 5.1 of the buyer's agreement (in short, the agreement) dated 29.12.2012, provides for handing over possession and the same is reproduced below:

***1.6 Commitment Period*** shall mean subject to Force majeure circumstances: intervention of statutory authorities and purchaser(s) having timely complied with all its obligations formalities or documentation as prescribed/ requested by seller/ confirming party, under this agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp duty and other charges, the seller/ confirming party shall offer the possession of the unit to the not purchaser(s) **within period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement whichever is later.**

***5. Possession and Holding Charges:***

***5.1*** The Seller/confirming party proposes to offer possession of the unit to the Purchaser(s) within the Committed

*Period. The seller /confirming party shall be additionally entitled to a grace period of 180 days after expiry of the said committed period for making offer of possession of the said unit.*

*(Emphasis supplied)*

22. The respondent promoter has proposed to handover the possession of the subject unit within a period of 42 months from the date of approval of building plans or date of agreement, whichever is later plus 180 days grace period. The date of approval of building plans is not available on record. Therefore, the due date of possession is calculated to be 42 months from the date of execution of the agreement. Accordingly, the due date of possession comes out to be 29.12.2016, including unqualified grace period of 180 days.
23. The complainant was allotted a unit bearing no. T20-803, Floor-8th, Tower-T20, admeasuring 1539.84 sq. ft., in project of the respondent named "BPTP Park Terra" situated at Sector-37D, Gurugram vide allotment letter dated 06.12.2012, and buyer's agreement was also executed between the complainant herein and the respondent regarding the said allotment on 29.12.2012. The complainant has paid an amount of Rs.18,12,109/- against the sale consideration of Rs.88,77,750/-. The occupation certificate for the subject unit has been obtained by the respondent promoter on 24.08.2022.
24. The respondent has submitted that payment request letter dated 06.12.2012, and reminder letters dated 27.12.2012, 28.01.2013, 28.02.2013 and final reminder dated 02.04.2013 were sent to the complainant to pay the outstanding dues. However, the complainant defaulted in making payments and the respondent was constrained to cancel the allotment of the unit vide cancellation letter dated 22.05.2013. Now the question before the Authority is whether the

cancellation made by the respondent vide letter dated 22.05.2013 is valid or not ?

25. On consideration of documents available on record and submissions made by both the parties, the Authority is of the view that on the basis of provisions of buyer's agreement, the complainant has paid an amount of Rs.18,12,109/- against the total sale consideration of Rs.88,77,750/- and no payment was made by the complainant after 18.10.2012. Thereafter, the complainant too made a surrender request vide an e-mail dated 09.01.2014 and sought refund of amount paid by him along with interest. Therefore, the unit allotted to the complainant was cancelled by the respondent on 22.05.2013. Further, the respondent vide e-mail dated 05.10.2016 also gave a conditional opportunity to the complainant to pay the outstanding dues with interest and get the unit restored, however the complainant conveyed his unwillingness to continue with the project owing to ill health of his father by way of e-mail dated 09.01.2014 i.e., before the expiry of due date of possession (29.12.2016). Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the buyer's agreement dated 29.12.2012 as well as request of the complainant for refund is held to be valid. But while cancelling the unit, it was an obligation of the respondent to return the paid-up amount after deducting the amount of earnest money.

26. The Authority after taking into consideration the scenario prior to the enactment of the Act, 2016 as well as the judgements passed by Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, has already prescribed vide Regulation 11(5) of 2018 that the forfeiture amount of the earnest

money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.

27. Further, the deductions made from the paid-up amount by the respondent are not as per the law of the land laid down by the Hon'ble Apex Court of the land in cases of *Maula Bux VS. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136*, wherein it was held that *forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage.* National Consumer Disputes Redressal Commissions in *CC/435/2019 Ramesh Malhotra VS. Emaar MGF Land Limited* (decided on 29.06.2020) and *Mr. Saurav Sanyal VS. M/s IREO Private Limited* (decided on 12.04.2022) and followed in *CC/2766/2017* in case titled as *Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022*, held that 10% of basic sale price is reasonable amount to be forfeited in the name of "earnest money". Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under-

**"5. AMOUNT OF EARNEST MONEY**



*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*

28. In so far as the relief seeking refund of the amount paid along with interest under the provisions of the RERA Act is concerned, the respondent is directed to refund the paid-up amount of Rs.18,12,109/- after deducting 10% of the sale consideration being earnest money within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.
29. Although the complainants are entitled to refund of the balance amount after deduction as above, but it would be inequitable and unjust to direct the respondent to pay interest from the date of cancellation i.e. 22.05.2013, particularly in light of the fact that breach of the contract has been done on part of the complainant. Accordingly, the Authority finds it appropriate to allow interest at prescribed rate on the balance refundable amount from the date of filing of complaint by the allottees i.e. 25.02.2025 till its actual realization.
30. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs.18,12,109/- after deducting 10% of the sale consideration being earnest money along with an interest @10.80% p.a. (the State Bank of India highest



marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount from the date of filing of complaint by the allottees i.e. 25.02.2025, till actual date of refund of the amount within the timelines provided in Rule 16 of the Rules, 2017 ibid.

**H. Directions of the authority**

31. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under Section 34(f):

I. The respondent is directed to refund the paid-up amount of Rs.18,12,109/- after deducting 10% of the sale consideration being earnest money along with an interest @10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of filing of complaint by the allottees i.e. 25.02.2025, till its realization.

II. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

32. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

33. The complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
34. Files be consigned to registry.



**(Phool Singh Saini)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 12.03.2026**



**HARERA**  
GURUGRAM