



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1503 of 2023
Date of filing.:	17.07.2023
Date of first hearing.:	23.08.2023
Date of decision.:	12.02.2026

Suman Gupta W/o Sh. Subhash Chander Gupta
R/o House no. 658, Sector-7
Urban Estate, Kurukshetra Faridabad, Haryana-136118COMPLAINANT

VERSUS

1.M/S BPTP Limited
M-11, Middle Circle, Connaught Circus,
New Delhi-110001
2. M/S BPTP Limited
Site office, Park Floors, Sector-76
Faridabad

....RESPONDENTS

CORAM: Parneet Singh Sachdev Chairman
Nadim Akhtar Member
Dr. Geeta Rathee Singh Member

Present: - Mr. Gaurav Gupta, Counsel for complainant through VC
Mr. Tejeshwar Singh, Counsel for the respondents through VC.

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ORDER (PARNEET S. SACHDEV-CHAIRMAN)

1. Present complaint has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of project, details of sale consideration, amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project.	Park Floors, Sector 76, Faridabad.
2.	Nature of the project.	Residential
3.	RERA Registered/not registered	Not Registered
4.	Details of unit.	T-33-301, 1170 sq. ft.
5.	Date of Allotment letter issued in name of Vibhu Gupta (son of	15.12.2008

	complainant)	
6.	Date of substitution of complainant's name	22.06.2010
7.	Date of builder buyer agreement	05.10.2010
8.	Due date of possession (36+6)	05.04.2014
9.	Possession clause in BBA (Clause 2.1)	<p><i>2.1 Subject to Clause 9 herein or any other circumstances not anticipated and beyond control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited timely payment of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser within a period of 36 months from the date of issuance of the sanction Letter of the building plans of the said Colony. The Purchaser agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days.</i></p>

		<i>after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority. The Seller/Confirming Party shall give Notice of Possession to the Purchaser with regard to the handing over of possession, and in the event the Purchaser fails to accept and take the possession of the said Flat within 30 days of, the Purchaser shall be deemed to be custodian of the said Flat from the date indicated in the notice of possession and the said Flat shall remain at the risk and cost of the Purchaser.</i>
10.	Total sale consideration	₹ 20,80,260/-
11.	Amount paid by complainant	₹30,54,151/-
12.	Offer of possession	17.08.2013 and 20.01.2014
13.	Occupation Certificate	Applied on 01.05.2012. Not received till date.

B. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

3. Facts of complaint are that the Mr. Vibhu Gupta son of complainant had booked a unit in the project of the respondent namely "Park Floors" situated at Sector 76, Faridabad, Haryana by paying booking amount of Rs 1,60,000/- on 05.09.2008. Allotment letter for unit no. T-33-301,

tower-T 33 having area of 1170 sq. ft. was issued in favor of Mr. Vibhu Gupta on 15.12.2008. Copy of allotment letter is annexed as Annexure C-1. Thereafter, name of complainant was substituted in place of Mr. Vibhu Gupta on 22.06.2010. Copy of letter dated 22.06.2010 is annexed as Annexure C-2. A builder buyer agreement was executed between the parties on 05.10.2010 and as per clause 2 of the agreement, possession of the unit was to be delivered within a period of 36 months plus grace period of 180 days from the date of execution of agreement subject to force majeure circumstances.

4. That complainant has already paid an amount of Rs 30,54,151/- to the developer in different installments including maintenance charges of Rs 116057/- and last installment was paid on 07.09.2013 and nothing is due towards the complainant and now complainant is feeling cheated by the developer. Copies of payment receipts are annexed as Annexure C-4.
5. That complainant has already paid stamp duty charges and conveyance deed charges and now no amount has been due towards the complainant but still offer of possession has not been issued by the developer and from the last 13 years no Occupancy Certificate has been obtained by the developer.



6. That time period of 12 years 6 months have been lapsed and even after the target date more than 9 years have been elapsed but till date no offer of possession has been issued by the developer.
7. That on every visit the complainant requested the respondent for handover of possession of the residential flat allotted to her alongwith OC and also clear the status of the project but the respondents kept on giving false assurances saying that construction is in progress and same would be completed very soon.
8. That in view of the above, since the respondents promoter are in default the complainant is entitled to invoke Section 18 of RERA Act,2016. Respondent have failed to develop the project as promised at the time of initial booking/allotment. The complainant has invested her lifelong earning in the project based on assurances given by respondent, however, they have been cheated and harassed. Thus, the present complaint.

C. RELIEF SOUGHT

9. That the complainants seeks following relief and directions to the respondent:-
 - i. In the event that the registration has been granted to the Respondents-Promoters for the project namely 'Park Floors', Sector-76 in Faridabad, Haryana under RERA read with

- relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA for violating the provisions of the RERA. ii. In exercise of powers under section 35, direct the Respondents- Promoters to place on record all statutory approvals and sanctions of the project;
- ii. In exercise of powers under section 35 OF RERA AND RULE 21 OF HRE (R&D) RULES, 2017, to provide complete details of EDC/EDC and statutory dues paid to the Competent Authority and pending demand if any;
- iii. Direct the Respondent No.1 to complete the abovementioned unit in all manner and execute the conveyance deed in favour of the complainant as early as possible after taking all the necessary documents from the concerned department.
- iv. Direct the Respondent No. 1 to pay the delayed compensation as per clause 2.3 of the agreement because complainant paid entire sale consideration alongwith other charges to the developer and placed on record all the receipts.
- v. Direct the Respondent No.1 to complete the construction of the allotted unit strictly in terms of the 'Flat Buyer's Agreement' and execute the conveyance deed with

Completion Certificate/Occupation Certificate from the competent authority immediately.

vi. Direct the Respondent No.1 and No.2 to provide infrastructural facilities/amenities in the 'Park Floors' Residential Colony, as mentioned in the Flat Buyer's Agreement':

- a) Organized green landscaped areas;
- b) Kids Park;
- c) Jogging and Walking Track;
- d) Sitting Areas;
- e) Adequate Street Lighting & Open Area Lighting;
- f) Recreational Club, and
- g) Convenient Shopping Centre.

vii. Direct the Respondent No.1 and No.2 to pay compensation for the delayed period in handing over the physical possession of the allotted unit to the complainant alongwith interest @18% p.a. on the deposited amount in addition to Rs.5/- per Sq. ft. per month of the Super/Built-up Area of the allotted floor starting from the expiry of 30 months (Clause 2.3 of the 'Flat Buyer's Agreement') and ending one day before the date of actual possession of the flat.

viii. Direct the Respondent No.1 and No.2 to pay compensation of Rs.5,00,000/- on account of harassment, mental agony and undue financial hardship caused to the Complainant on

account of deficiency in service, delay in completing the construction of the allotted Floor and unfair trade practices;

- ix. The complainant may be allowed with costs and litigation expenses of Rs.25,000/-;
- x. Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 22.11.2023 pleading therein:

10. That the request of the complainant was accepted by the Respondent and a residential unit bearing no. Flat no. T33-301 on third floor in Tower T-33 on admeasuring tentatively 1170 sq. ft (now 1283 sq. ft.) was allotted to the Original Allottee vide Allotment Letter dated 05.12.2008. A copy of the Allotment Letter dated 05.12.2008 is annexed as Annexure R2.
11. That the Original Allottee and the Complainant requested the Respondent for substituting the name of the Original Allottee with his mother i.e., the Complainant. The Original Allottee and the Complainant thereafter executed the indemnity cum undertaking dated 13.01.2020 and affidavit in respect of the name substitution of the Complainant. That thereafter the Respondent confirmed the name substitution of the Complainant vide letter dated 22.06.2010. The Indemnity Cum Undertaking dated

13.01.2010 and Affidavit of the Original Allottee and the Complainant and the letter confirming the substitution of name of complainant are annexed as Annexure R-3.

12. That flat buyer agreement dated 05.10.2010 was executed between the parties. Copy of agreement is annexed as Annexure R-4. As per clause 2.1, the respondent proposes to handover the possession of the unit within a period of 36 months from the date of issuance of sanction letter of the building plans alongwith grace period of 180 days. Proposed due date as per sanction of building plan comes out to 03.05.2014. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Ld. Tribunal, Chandigarh in the case titled as *Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022* that if the grace period is mentioned in the clause, the benefit of the same is allowed.

13. That due date was also subject to the incidence of force majeure circumstances and the timely payment by the Complainant. That the construction of the unit was deeply affected by such circumstances, the benefit of which is bound to be given to the respondents in accordance with clauses 9 of the flat buyer agreement.

14. That in the year 2012, on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The Hon'ble Supreme Court directed the framing of modern

mineral concession rules. Reference in this regard may be taken from the judgment of *Deepak Kumar v. State of Haryana*, (2012) 4 SCC 629, where the competent authorities took substantial time in framing the rules in case where the process of the availability of building materials including sand which was an important raw material for the development of the said Project became scarce. The respondents were faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc.

15. That in addition to the above, the construction was also affected by the act of non-receipt of timely payment against the unit. Despite there being number of defaulters in the project, including complainant, respondent had to infuse funds into the project and have diligently developed the project in question.

16. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the unit and applied for grant of occupancy certificate vide application for occupancy certificate dated 01.05.2012. Respondent offered the possession of unit to the complainant on 17.08.2013 after waiting for prescribed time for approval from the

competent authority. Respondent again issued an offer of possession on 19.03.2016 but complainant still failed to take the same. Copy of possession letter is annexed as Annexure R-7. Copy of the application for occupation certificate dated 01.05.2012 is annexed as Annexure R-6.

17. That respondent issued no objection for carrying out fit outs to the complainant on 26.03.2015 wherein the respondent requested the complainant to complete the pending formalities for enabling the respondent to execute and register the conveyance deed. Copy of NOC dated 26.03.2015 is annexed as Annexure R-8.

18. That complainant acted in breach of Section 19 (6) and 19 (7) of RERA Act, 2016 by not taking possession by paying outstanding due amount. Complainant has failed to take possession within 30 days of the offer of possession which he/she was obligated to accept under clause 2.1 of agreement.

E. ARGUMENTS OF COUNSEL FOR COMPLAINANT AND RESPONDENT

19. Ld. counsel for complainant reiterated the submissions as made in complaint. He requested that possession alongwith delay interest be awarded till a valid offer of possession supported with occupation certificate is made to complainant. Further, he clarified that respondent



no. 1 and 2, i.e. both BPTP were made respondents for providing two address of the builder. Directions be passed in respect of BPTP only.

20. Id. counsel for respondent argued that construction of the unit stands completed and occupation certificate which was applied on 01.05.2012 has not yet received any objections. So, deemed occupation certificate stands received on 01.05.2012. Offer was issued to complainant on 17.08.2013, however complainant did not accept said offer.
21. At this stage, Id. counsel for respondent was asked to point out the document which clearly establish that no objection of any sort stands received towards the application for occupation certificate dated 01.05.2012. To this, he only referred to application for occupation certificate.

G. ISSUES FOR ADJUDICATION

22. Whether the complainant is entitled to possession of the booked unit along with delay interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS OF THE AUTHORITY

23. Factual matrix of the case is that a unit was booked in the project being developed by the respondent namely "Park Floors" situated at Sector 76, Faridabad, Haryana by original allottee (Mr. Vibhu son of complainant) in the year 2008. Allotment letter for unit no. T-33-301, 1170 sq. ft. was issued in favor of original allottee. Upon request of original allottee and complainant, the



respondent has substituted the name of complainant on 22.06.2010. A builder buyer agreement was executed between the parties on 05.10.2010. An amount of Rs 30,54,151/- has been paid by the complainant against the basic sale consideration of Rs 20,80,260/-.

24. As per clause 2.1 of the agreement possession of the unit should have been delivered within a period of (36) months from the date of issuance of sanction letter of building plans. At the outset, it is relevant to comment with regard to clause of the agreement where the possession has been subjected to sanction of building plan that the drafting of this clause is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the floor buyer agreement by the promoter is just to evade the liability towards timely delivery of the unit and to deprive the allottee of his right accruing after delay in delivery possession. The respondent in its reply has submitted that the building plans got approved on 03.05.2011 thereby pushing the deemed date of possession to 03.05.2014. However, the respondent has not filed a copy of the same to substantiate as to whether the said date of approval is for original building plans or revised building. Thus, the contention of the respondent to calculated deemed date of possession from the date of sanction of building plans is rejected. The agreement further provides that the promoter shall be entitled to a grace period of 180 days after expiry of 36 months for filing and pursuing the grant of occupation certificate with respect to the whole of colony. It is a matter of fact, that the promoter applied for occupation certificate on 01.05.2012, i.e.



within time limit prescribed by the respondent/promoter in the floor buyer agreement. Accordingly, taking grace period of 180 days plus 36 months, the deemed date of possession is being calculated from the date of execution of floor buyer agreement, which comes out to 05.04.2014.

25. It is the stand of the respondent that the delivery of possession of the unit in question has been delayed beyond the stipulated period of time. Respondent has attributed this delay to circumstances beyond its control such as NGT order prohibiting construction activity, ban on construction by Supreme Court of India in M.C Mehta v. Union of India, ban by Environment Pollution (Prevention and Control) Authority for the cause of delay. In its reply the respondent has cited that the National Green Tribunal had put a ban on construction activities in the National Capital Region in the year 2016 thus causing delay in construction of the project in question. However, respondent has failed to attach a copy of the order of the National Green Tribunal banning the construction activities. It is noteworthy that in the captioned complaint possession of the unit should have been delivered by 05.04.2014 which is much prior to the proposed ban. Therefore, the respondent cannot be allowed to take advantage of the delay on its part by claiming the delay caused due to statutory approvals/directions.

26. It is stand of respondent that offer of possession after completing the construction of unit was issued to complainant on 17.08.2013. However, complainant did not accept the same as it was not supported with occupation certificate. No communication was made by the respondent with regard to status



of occupation certificate in the offer of possession as well as the reminder letters. I.d. counsel for respondent specifically stated that application dated 01.05.2012 for grant of Occupation Certificate has not received any objections from DTCP. Hence, it is a deemed Occupation Certificate. In this regard, Authority had enquired from respondent about placing on record the documents which establish on record that no objection of any sort was made to application dated 01.05.2012 for grant of Occupation certificate. It is pertinent to mention here that no document in support of plea of respondent that it is a deemed Occupation Certificate is on record. Without documentary evidence, the plea of respondent does not hold any merit and is therefore rejected.

27. As on date, complainant is praying for possession of the unit. In this regard, it is observed that admittedly the respondent had issued the offer of possession dated 17.08.2013 to the complainant without obtaining an occupation certificate. Said offer was not valid and complainant was not obligated to accept said offer. Therefore, impugned offer of possession stands quashed.

28. As per observations recorded above, the possession of the unit in question should have been delivered by 05.04.2014. However, respondent failed deliver possession within the time period stipulated in the buyer's agreement. However, no valid offer of possession has been made by the respondent till date. Admittedly, there has been an inordinate delay in delivery of possession but the complainant wish to continue with the project and take

possession. In these circumstances, provisions of Section 18 of the Act clearly come into play by virtue of which while exercising the option of taking possession of the booked unit, the complainant is also entitled to receive interest from the respondent on account of delay caused in delivery of possession for the entire period of delay till a valid offer of possession is issued to the complainant.

29. Authority hereby concludes that complainant is entitled to receive delay interest for the delay caused in delivery of possession from the deemed date of possession i.e 05.04.2014 till a valid offer of possession is issued to the complainant.

30. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to Section 18 (1) of the Act, Section 18 (1) proviso reads as under:-

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

.....

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”.

31. As per Section 18 of the RERA Act, interest shall be awarded at such rate as may be prescribed. The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:



(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

32. Rule 15 of RERA Rules, 2017 provides for prescribed rate of interest which is as under:

"Rule 15: "Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public"

33. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e., 12.02.2026 is 8.80%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.80%.

34. Hence, Authority directs respondent to pay delay interest to the complainants for delay caused in delivery of possession at the rate

prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.80% (8.80% + 2.00%) from the due date of possession till the date of a valid offer of possession duly supported with occupation certificate.

35. Authority has got calculated the interest on total paid amount as mentioned in the table below:

Sr. No.	Principal Amount (in ₹)	Deemed date of possession or date of payment whichever is later	Interest Accrued till date of order i.e 12.02.2026 (in ₹)
1.	30,54,151/-	05.04.2014	39,14,802/-
Total:	30,54,151/-		39,14,802/-
Monthly Interest payable w.e.f 12.03.2026:	30,54,151/-		27,111/-

36. Further, the complainant is seeking compensation and litigation cost. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as

per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation cost.

37. I.d. counsel for complainant has neither argued nor pressed upon relief clause no. (i), (ii), (iii) and (vii). Hence, no direction is being issued in respect of these reliefs.

I. DIRECTIONS OF THE AUTHORITY

38. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. Respondent is directed to pay upfront delay interest of Rs 39,14,802/- calculated in para no. 35 to the complainant towards delay already caused in handing over the possession within 90 days from the date of this order. Further, monthly interest of Rs 27,111/- calculated in para no. 35 shall be payable by the respondent to the



complainant up to the date of actual handing over of the possession after obtaining occupation certificate.

- ii. Respondent is directed to offer possession to the complainant alongwith statement of receivables and payables within 45 days of receipt of occupation certificate.
 - iii. Complainant will remain liable to pay balance consideration amount to the respondent at the time of possession offered to them.
 - iv. The respondent shall not charge anything from the complainant which is not part of the agreement to sell.
 - v. Respondent shall execute the Conveyance deed in favor of allottee within 3 months of receipt of Occupation Certificate.
39. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]



PARNEET S. SACHDEV
[CHAIRMAN]