

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

Complaint no.: 4789 of 2025
Date of filing: 19.09.2025
Date of decision: 30.01.2026

Permanand Yadav

R/o: - N-706, BPTP Spacio, Sector-37D, Gurugram,
Haryana -

Complainant

Versus

M/s BPTP Limited

Regd. office: - M-11, Middle Circle, Connaught Circle,
New Delhi-110001.

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Dhananjai Jain and Shri Anshul Sharma (Advocates)
Shri Venket Rao (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details:

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

S. No.	Particulars	Details
1.	Name and location of the project	"Park Serene - SPACIO", Sector-37D, Gurugram, Haryana.
2.	Project area	23.814 Acres.
3.	Nature of Project	Group Housing Colony
4.	DTCP license no. and validity status	83 of 2008 dated 05.04.2008 Valid up to 04.04.2025
5.	Name of Licensee	M/s Super Belts Pvt. Ltd. C/o M/s Countrywide Promoters Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered (For Tower-8 to Tower-13) (10.22 acres) 300 of 2017 dated 13.10.2017 Valid up to 12.10.2020
7.	Unit No.	N-706, Tower-N (As on page no. 36 of complaint)
8.	Unit area admeasuring	1000 sq. ft. [Super Area] [At the time of allotment] (As on page no. 36 of complaint) 1079 sq. ft [Super Area] (increased by 7.9%) [At the time of offer of possession] (As on page no. 78 of complaint)
9.	Booking form	19.07.2010 (As on page 69 of reply)
10.	Allotment letter	28.10.2010 (As on page no. 36 of complaint)
11.	Flat Buyers Agreement	17.02.2011 (As on page no. 41 of complaint)
12.	Possession clause	Clause 3 Possession <i>3.1. Subject to clause 10 herein or any other circumstances not anticipated and beyond reasonable control of the Seller/Confirming Party and any restraints/ restrictions from</i>

		<p><i>courts/ authorities and subject to the purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement 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 handover the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to 180 days after the expiry of the 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.</i></p> <p style="text-align: right;">[Emphasis supplied]</p> <p>(As on page no. 38 of complaint)</p>
13.	Due date of possession	<p>19.01.2014</p> <p>[Note: due date is calculated 36 months from date of booking + 180 days grace period]</p>
14.	Basic sale consideration (Revised super area)	<p>Rs.25,21,050/-</p> <p>(As per SoA dated 30.08.2023 at page no. 85 of complaint)</p>
15.	Total sale consideration (Revised super area)	<p>Rs.43,18,641/-</p> <p>(As per SoA dated 30.08.2023 at page no. 85 of complaint)</p>
16.	Amount paid by complainant	<p>Rs.40,48,741/-</p> <p>(As per SoA dated 30.08.2023 at page no. 85 of complaint)</p>
17.	Occupation Certificate	<p>30.07.2020</p> <p>(As on page no. 73-75 of complaint)</p>
18.	Offer of possession	<p>01.08.2020</p> <p>(As on page no. 76-81 of complaint)</p>

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the complainant is the genuine homebuyer and a law-abiding citizen and resident of N-706, BPTP Spacio, Sector 37D, Gurugram, Haryana.
- II. That the respondent is a company and is in the business of construction and development of residential as well as commercial projects across the country in the name of "BPTP PARK SERENE - SPACIO" located at Sec. 37 D, Gurugram.
- III. That the real estate project named "BPTP PARK SERENE - SPACIO" is the subject matter of the present complaint and is situated at Sector 37 D, Gurugram. Therefore, this Authority has the jurisdiction to try, entertain, and decide the present complaint.
- IV. That the respondent, in the year 2010, approached the complainant and offered to invest in its upcoming project "BPTP PARK SERENE - SPACIO" and lured the complainant with various benefits and facilities that would be provided to the complainant while booking in the said project. Based on the assurances of the builder, the complainant booked a flat bearing no. N-706 in the year 2010, admeasuring a super area of 1000 Sq. Ft. for a total consideration of Rs.23,27,500/- including EDC, IDC, etc.
- V. That the respondent issued an allotment letter dated 28.10.2010 qua the said flat and accordingly confirmed the allotment of the said unit to the complainant.
- VI. That thereafter, the builder-buyer agreement was executed on 12.02.2011 between the builder and the complainant, and as per clause 3.1 of the said agreement, the respondent was required to hand over possession in a period of 36 months from the date of execution of the builder-buyer agreement with a grace period of 180 days as provided under the same clause. Even after repeated emails, communications, physical meetings, and oral requests, the respondent was not able to hand over the said unit to the complainant as the respondent did not carry out the construction

- work on time. Accordingly, the due date of possession ought to have been 13.08.2014.
- VII. That the complainant has made a payment of Rs.40,48,741/- as per the statement of account dated 30.08.2023 issued by the respondent to the complainant.
- VIII. That the complainant kept on enquiring the possession of his unit to the representatives of respondent however the respondent kept on delaying the same on one pretext or the another. However, the builder has received the occupation certificate of Tower-N on 30.07.2020.
- IX. That the respondent offered the possession of the said unit vide letter dated 01.08.2020. The respondent handed over the possession of the said unit to the complainant after a delay of almost 6.5 years. However, the registry of the said unit is yet to be executed by the builder in favour of the complainant. As per the terms of the BBA, the builder is bound to execute the registry of the said unit in favour of the complainant within 30 days from receipt of the occupation certificate. However, the builder, in complete contravention of the terms of the said BBA, has not complied with its duty.
- X. It is pertinent to state that the respondent had got a one-sided builder buyer agreement signed as complainant was in need of a residential space and intended to have a home for his family to live and therefore the complainant had no other option but to sign a pre-printed builder buyer agreement. It is submitted that the biased clauses of the said agreement are so as to that the respondent has charged compounded interest @18% on delayed instalments as per clause 11.3 of the builder-buyer agreement and offered a delay penalty of Rs.5/- per month per sq. ft. as per clause 3.3 of the builder-buyer agreement to the customers in the event the

respondent delays to handover the possession of the said unit. These clauses are totally illegal and arbitrary.

- XI. Notwithstanding the above, as per the terms of the builder buyer agreement under clause 3.3 of the said agreement, in case of delay in handing over the possession of the said unit, the respondent is liable to pay a penalty @ Rs.5/- per sq. ft. per month for the delayed period. The respondent has not paid any delay penalty against the said delay of 6.5 years, nor was the complainant compensated for the said default of the builder.
- XII. That the complainant had made timely payment of all the instalments from time to time. However, it was only in the year 2020 that the complainant got possession of his flat after a delay of almost 6.5 years from the agreed date of possession as per the builder-buyer agreement, without being paid any compensation and delay penalty as per BBA.
- XIII. That the respondent always advertised itself as a very ethical business group that lives up to the commitments in delivering its housing projects as per the promised quality and timelines. However, in the present case, the respondent has totally failed on all its assurances.
- XIV. It is pertinent to state that the complainant was made to pay a total sum of Rs.40,48,741/- even though the agreed consideration under the BBA was Rs.23,27,500/-. This extra payment of Rs.17,21,241/- was paid by the complainant because the respondent added charges on account of PLC, club membership charges, increase in the super area, parking charges, etc. The complainant has made the payment of the entire consideration along with the additional extra payment that was asked by the builder under protest only because the complainant was left with no other option.
- XV. It is pertinent to state that as stated in the offer of possession letter dated 01.08.2020, the respondent has imposed a sum of Rs.6,34,452/- on

account of escalation cost without any justification of the same. It is submitted that the escalation of the cost is on account of the delay caused by the respondent and therefore this extra burden cannot be imposed upon the complainant. Further, the respondent has imposed service charges, GST and also VAT pertaining to various dates amounting to a sum of Rs.2,86,048/-. This amount also needs to be amended as per the judgment passed by this Authority. Further, this Authority while deciding a group of matter against the respondent has passed its order dated 26.04.2022 whereby this Authority has directed that the respondent cannot impose such huge escalation charges and therefore the said amount needs to be accordingly amended by the respondent.

- XVI. The builder has again raised a frivolous and arbitrary demand to the tune of Rs.2,64,000/- on 04.09.2021 against stamp duty and has put a condition that the builder shall get the registry executed in favour of the complainant only when the complainant complies with the arbitrary and illegal demand of the builder and makes payment of the said amount to the builder.
- XVII. That it is a matter of fact that the complainant has paid an excess amount of Rs.17,21,241/- to the builder, and thus, there are no dues pending and payable by the complainant to the builder. However, the builder is delaying the execution of the registry in favour of the complainant and is asking for more money for registration of the unit even though the complainant has made excess payment. On the other hand, it is the builder who is in default of handing over delayed possession of the unit for more than 6.5 years to the complainant. As per the terms of the builder-buyer agreement, the complainant is entitled to delayed penalty on this account under Section 18 of the RERA Act.

- XVIII. That as per Section 12 of the RERA Act, 2016 the promoter is liable for giving any incorrect statement etc. Further, as per Section 11 (4) of the RERA Act, 2016, the promoter is liable to abide by the terms of the agreement to sale. Also, as per Section 18 of the RERA Act, 2016 the promoter is liable to refund the amount and pay interest at the prescribed rate of interest and compensation to the allottees of an apartment on time. In addition to the same the respondent is bound by the Haryana Real Estate Regulation Rules, 2017 which lists the interest computed while calculation the delay interest.
- XIX. That the builder has failed to fulfil its obligations under the terms of the BBA. Therefore, the builder is liable to execute the registry of the said unit in favour of the complainant with no additional cost.
- XX. That the RERA Act has imposed upon the power to decide the issue in hand under Section 34 of the Act and therefore this court has all the rights and power to adjudicate the instant case.
- XXI. That the complainant declares that no other complaint has been filed by the complainant regarding the said unit against the builder before any other court of law or any other authority.
- XXII. That the complainant is a genuine homebuyer and has purchased the said unit with his hard-earned money. Therefore, holding possession of the unit without execution of the registry in its favour for the last three years has made the complainant suffer, as the complainant is not in a position to enjoy and deal with his property as per his free will in any manner whatsoever. Thus, the complainant has, firstly, suffered mental harassment and loss due to delayed possession of the said unit, and secondly, the complainant continues to suffer due to the harassing and dictating attitude of the builder of not executing the registry of the said unit in favour of the complainant. It is pertinent to mention that the

complainant had to live in a rented premises for more than 6.5 years, even though the complainant had paid the entire amount to the builder and the builder had delayed possession of the said unit to the complainant.

XXIII. That the complainant has filed a complaint case bearing no. 4780/2023 before this Authority, however in light of the common order passed by this Authority in the case of Project "Spacio" of the respondent the complainant was granted liberty to withdraw the said complaint with a liberty to file fresh complaint and therefore the complainant is filing the fresh complaint incorporating additional prayers in light of the common order dated 26.04.2022.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to execute conveyance deed of the said unit bearing no. N-706, BPTP Spacio, Sector-37D, Gurugram with immediate effect;
 - ii. Direct the respondent to make payment of the delay penalty charges to the complainant for the period of 6.5 years of delay;
 - iii. Direct the respondent to revise the calculation of the dues qua cost escalation charges, GST, VAT and service tax in light of the common order passed by this Authority vide its order dated 26.04.2022 applicable to the case of the complainant;
 - iv. Direct the respondent to refund the excess amounts that have been paid by the complainant to the respondent on account of cost escalation, GST, VAT, Service tax along with interest;
 - v. Direct the respondent to conduct the repairs of the said unit at its own cost because of the faulty and defective construction;
 - vi. Any other relief that this Authority may deem fit and proper in the interest of justice.
5. On the date of hearing, the Authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to Section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent by way of written reply has made the following submissions:
- I. That the respondent is a real estate company engaged in the business of the development and construction of real estate projects and is one of the reputed names in the real estate sector in the national capital region (NCR) and largely recognized in the real estate sector for its successful Projects.
 - II. That Mr. Premanand Yadav, with an intention of booking a residential unit in the project of the respondent, namely "Park Serene - Spacio", submitted an application for allotment by sale of residential flat in "Park Serene" dated 19.07.2010 and requested the respondent to allot a residential unit in the project.
 - III. That after considering the booking application and request of the complainant, the respondent vide allotment letter dated 28.10.2010, allotted a flat bearing no. N-706, in Tower - N, admeasuring 1000 sq. ft. super area.
 - IV. Thereafter, a flat buyer's agreement dated 17.02.2011 was executed between the complainant and the respondent containing the mutually agreed terms and conditions with respect to allotment of the subject unit.
 - V. That due to certain force majeure situations beyond the control of the respondent, the construction and development of the project were hampered. However, the respondent, despite facing the force majeure situations beyond its control, completed the construction and development of the project, and on 21.01.2020, the respondent made an application before the competent authority for issuance of the occupation certificate.
 - VI. Thereafter, an occupation certificate dated 30.07.2020 was granted by the competent authority.

- VII. That after receipt of the occupation certificate, the respondent offered the possession of the subject unit to the complainant *vide* offer of possession letter dated 01.08.2020.
- VIII. That after receiving the offer of possession, the complainant inspected the subject unit and, after being fully satisfied with the unit, the complainant took possession of the unit. that the complainant had received possession of the unit in the year 2020 is categorically admitted by the complainant in para 12 of the complaint.
- IX. Thereafter, the respondent made multiple requests to the complainant for executing the conveyance deed of the subject unit. However, the complainant paid no heed to the request of the respondent and failed to come forward to execute the conveyance deed.
- X. It is most humbly submitted that the construction / development of the unit was hampered due to and was subject to the happening of the *force majeure* and other circumstances beyond the control of the company, the benefit of which is bound to be given to the respondent in accordance with clause 10 of the BBA, it is categorical to note that respondent faced certain *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein *vide* Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. The stopping of mining

activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made, and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- XI. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- XII. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an

initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. That considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay.

XIII. That from the facts indicated above and documents appended, it is comprehensively established that a period of 292 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. The Authority was pleased to allow the grace period and hence, the benefit of the above affected 292 days need to be rightly given to the respondent.

XIV. That the complainant in the year 2021, approached the respondent to address all concerns with respect to the subject unit. That all the issues and grievances of the complainant were mutually settled between the parties, and a settlement was also proposed by the respondent *vide* settlement letter/full and final discount letter shared on email dated 12.04.2021, which was acknowledged and accepted by the complainant *vide* email dated 12.04.2021. Thus, a formal settlement was arrived at between the parties, wherein the complainant agreed that all the grievances, claims and allegations against the respondent with respect to

the subject unit have been finally settled and the complainant shall not raise any claim against the respondent at any time in future with respect to the unit, development works, charges including but not limited to increase in area charges, cost escalation charges, taxes, delayed possession charges in terms of the agreement or the provisions of applicable laws including Real Estate (Regulation and Development) Act, 2016. That after the settlement between the parties, the complainant was obligated to abide by the terms and conditions of the settlement. That according to the settlement letter/full and final discount letter, the respondent, in good faith and gesture of goodwill, gave a special credit of Rs.4,53,139/- to the complainant.

- XV. However, instead of complying with the terms and conditions of the settlement or executing the conveyance deed of the subject unit, the complainant, with a *malafide* intention of extracting unjust enrichment from the respondent, filed a *complaint bearing No. 4780 of 2023*, titled as "*Parmanand Rao Yadav vs BPTP Ltd.*". That during the proceedings dated 30.07.2025, the said complainant requested for withdrawal of the said complaint with a liberty to file a fresh complaint, and accordingly, the said complaint was dismissed by the Authority *vide* its order dated 30.07.2025 with liberty to file a fresh complaint.
- XVI. Thereafter, the present complaint was filed by the complainant on 19.09.2025, with false and frivolous grounds with a *malafide* intention of extracting unjust enrichment from the respondent.
- XVII. That the present complaint has been preferred by the complainant on frivolous and unsustainable grounds and the complainant has not approached this Authority with clean hands and is trying to suppress material facts relevant to the matter. The complainant is making false, misleading, fatuous, baseless and unsubstantiated allegations against the

respondent with malicious intent and sole purpose of extracting unlawful gains from the respondent. The instant complaint is not maintainable in the eyes of the law and is devoid of merit, therefore is fit to be dismissed *in limine*.

XVIII. That, hence, the cause of action, if any, came to an end on the receipt of occupation certificate. However, after the offer of possession, the complainants did not press for the payment of delay possession charges, and it was only after approximately 5 years that the present complaint was filed as an afterthought. Furthermore, it is noted herein that the previous complaint was filed by the complainant after a delay of 3 years 3 months and 6 days and an amended complaint in the previous complaint was filed after a delay of 4 years 9 months and 6 days. Since, the previous complaint was not dismissed by the Authority on merits and the matter was withdrawn by the complainant. Therefore, the present complaint continues to be barred by law of limitation. The complainants had been sleeping on his rights for years and hence, no equity can be granted in favour of the complainant in such a circumstance and the present complaint deserves to be dismissed.

7. All other averments made in the complaint are denied in toto.
8. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the Authority:

9. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

10. 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

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

Section 11(4)(a)

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

12. 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.

F. Findings on the objections raised by the respondent:

F.I. Objection regarding Force Majeure circumstances:

13. The respondent has raised the contention that the construction of the project, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction and development activities, restrictions on usage of water and adverse effects of covid etc. But all the pleas advanced in this regard are devoid of merit. Firstly, the orders passed by NGT banning construction in the NCR region are for short period which does not make such a huge impact on project which can cause and justify inordinate delay of 6 years. Moreover, these events are of routine in nature happening

annually and the promoter is required to take the same into consideration while fixing the due date of possession. Secondly, the Authority has gone through the possession clause of the agreement and observed that the respondent proposes to handover the possession of the allotted unit by 19.01.2014. Further, quoting HARERA notification no. 9/3-2020 dated 26.05.2020, the respondent requested for an extension of 6 months in lieu of Covid-19. However, the Authority has already granted the respondent a grace period of 6-month extension due to being "unqualified" as per clause 3.1 of the buyer agreement and again the respondent is seeking a second extension based on the COVID-19 pandemic, which is unjustified double-benefit. Therefore, any extension in timeframe for handover of possession in lieu of Covid-19 cannot be granted and the due date for handover of possession remains unaltered i.e., 19.01.2014, which is much prior to the occurrence of Covid-19 restriction and hence, the respondent cannot be benefitted for its own wrong. The Authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020* which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

14. Thus, the respondent cannot be given any leniency based on aforesaid reasons as it is well settled principle that a person cannot take benefit of his own wrong.

F.II Objection regarding complaint is barred by limitation:

15. The respondent has contended that the present complaint is not maintainable and barred by the law of limitation as the cause of action arose in August,

2020, when the possession of the unit was offered to the complainant vide letter dated 01.08.2020 and any grievance w.r.t the same was be raised within a reasonable period. After going through the documents available on record as well as submissions made by the parties, the Authority is of view that the law of limitation does not strictly apply to the Act of 2016. However, the Authority under Section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim that "*the law assists those who are vigilant, not those who sleep over their rights*". Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

16. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** has held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
17. In the present matter, the cause of action arose on 01.08.2020, when the possession of the unit was offered to the complainant by the respondent. It is observed by the Authority, That the complainant had earlier filed a complaint bearing no. 4780 of 2023 on 07.11.2023 and the same was dismissed as withdrawn with liberty to file a fresh complaint vide order dated 30.07.2025. Which was 3 years 3 months and 7 days from the date of cause of action. Therefore, after taken into consideration the exclusion period from 15.03.2020 to 28.02.2022 as observed by the Hon'ble Apex above, it is determined that the earlier complaint was well within limitation and thereafter, the complainant filed the present complaint on 19.09.2025. Hence, the plea taken by the respondent herein is denied, being not maintainable.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to execute conveyance deed of the said unit bearing no. N-706, BPTP Spacio, Sector-37D, Gurugram with immediate effect;

G.II Direct the respondent to make payment of the delay penalty charges to the complainant for the period of 6.5 years of delay;

G.III Any other relief that this Authority may deem fit and proper in the interest of justice.

18. The above-mentioned reliefs sought by the complainant are being taken together as findings in one relief will definitely affect the result of the other reliefs and the same being interconnected.

19. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges along with interest on the amount paid. Proviso to Section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules.

"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, —

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.

20. Clause 3.1 of the flat buyer agreement provides the time period of handing over of possession of the unit to the complainant and the said clause is reproduced below:

"Clause 3.1 "Possession"

*Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement 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 handover the possession of the Flat to the Purchaser(s) **within a period of 36 months from the date of booking/registration of the Flat.** The Purchaser(s) agrees and understands that the Seller/Confirming*

party shall be entitled to a grace period of 180 (one Hundred and Eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority...

[Emphasis supplied]

21. **Due date of possession and admissibility of grace period:** The promoter proposed to hand over the possession of the said unit within period of 36 months from the date of booking/registration of the flat. The booking of the flat was made on 19.07.2010 as per receipt on page no. 69 of reply. Therefore, the due date of handing over possession comes out to be 19.07.2013. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP.
22. The Authority put reliance on the judgement dated 08.05.2023 of **Hon'ble Appellate Tribunal in Appeal No. 433 of 2022 tittle., as Emaar MGF Land limited Vs Babia Tiwari and Yogesh Tiwari** wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under: -

As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the

agreement for applying and obtaining the Occupation Certificate. Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to 07.06.2014.

23. Therefore, in view of the above judgement and considering the provisions of the Act, the Authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 19.01.2014 including grace period of 180 days.

24. Admissibility of delay possession charges at prescribed rate of interest:

Proviso to Section 18 provides 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 possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules. Rule 15 has been reproduced as under:

“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.”

25. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 30.01.2026 is 8.80 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.80%.

27. The definition of term 'interest' as defined under Section 2(z a) of the Act provides that 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. The relevant section is reproduced below:

"(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;"

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same as is being granted to the complainant in case of delayed possession charges.

29. On consideration of the circumstances, the evidence and other records and submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The due date of handing over possession was 19.01.2014. As far as grace period is concerned, the same is allowed for the reasons quoted above. The occupation certificate has been received by the respondent on 30.07.2020 and the possession of the subject unit was offered to the complainant on 01.08.2020. Copies of the same have been placed on record. The Authority is of the considered view that there is delay on the part of the respondent to offer possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Therefore, the delay possession charges shall be payable from the due date of

- possession, i.e., from 19.01.2014 till valid offer of possession after obtaining occupation certificate from the competent authority plus 2 months.
30. Further, as per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 30.07.2020. The respondent offered the possession of the unit in question to the complainant only on 01.08.2020. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 19.01.2014 till valid offer of possession plus 2 months.
31. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e., 10.80% per annum from due date of possession i.e., 19.01.2014 till the offer of possession (01.08.2020) plus 2 months' i.e., 01.10.2020, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*.
32. Further as per Section 17(1) proviso of the Act, 2016, the respondent/promoter is under an obligation to execute the registered conveyance deed in favour of the allottee/complainant within three months from the date of issue of occupancy certificate. The relevant provision is reproduced below:

"Section 17. Transfer of title

*(i) the promoter shall execute a registered conveyance deed
.....local laws:*

Provided that, in absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from the date of issue of occupancy certificate.

[Emphasis supplied]

33. As occupation certificate of the unit has been obtained from the competent authority on 30.07.2020, therefore, there is no reason to withheld the execution of conveyance deed which can be executed with respect to the unit. Accordingly, the Authority further directs the respondent to execute the registered conveyance deed in favor of the complainant after payment of applicable stamp duty charges and administrative charges up to Rs.15,000/- as fixed by the local administration, if any, within 90 days from the date of this order.

G.IV Direct the respondent to revise the calculation of the dues qua cost escalation charges, GST, VAT and service tax in light of the common order passed by this Authority vide its order dated 26.04.2022 applicable to the case of the complainant;

G.V Direct the respondent to refund the excess amounts that have been paid by the complainant to the respondent on account of cost escalation, GST, VAT, Service tax along with interest;

34. Regarding the project "Park-Serene-Spacio", the committee chaired by Sh. Manik Sonawane, IAS (retired), Sh. Lakmi Kant Saini, C.A and Sh. R.K. Singh, CTP (retired), issued comprehensive recommendations.

35. After considering the committee report dated 08.09.2021, the Authority had already dealt the above-mentioned issue's in compliant bearing no. **3203 of 2020 & 44 other titled as Vijay Kumar Jadhav Vs. M/s BPTP Limited and M/s Countrywide Promoters Pvt. Ltd. & 44 other's** vide order dated 26.04.2022. Accordingly, the respondent is directed to raise demands in accordance with the committee's recommendations dated 08.09.2021, as

these have been explicitly addressed in the report. Any demand, if made by the respondent in contravention of the said committee's report shall be illegal.

G.VI Direct the respondent to conduct the repairs of the said unit at its own cost because of the faulty and defective construction;

36. As per Section 14(3) of the Act, 2016, on failure of the respondent/promoter to rectify structural defects within a period of thirty days, which have been brought to its knowledge within five years from the date of handing over of possession to the complainants/allottees, the only remedy available to them is to receive appropriate compensation, which is not within the jurisdiction of the Authority.

H. Directions of the Authority:

37. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under Section 34(f):

- i. The respondent is directed to pay interest for every month of delay to the complainant at the prescribed rate of interest @10.80% per annum, from due date of possession i.e., 19.01.2014 till the offer of possession (01.08.2020) plus 2 months i.e., 01.10.2020, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules after deducting any amount paid by respondent to the complainant on account of delay possession charges, if any. The arrears of the interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is

- directed to pay outstanding dues, if any remains, after adjustment of delay possession charges within a period of next 30 days.
- iii. The rate of interest chargeable from the complainant/ allottee by the respondent, shall be charged at the prescribed rate i.e., 10.80% by the respondent which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- iv. The respondent is further directed to handover possession of the unit to the complainant after receiving the outstanding dues within a period of one month and thereafter execute registered conveyance deed in favour of the complainant in terms of Section 17(1) of the Act of 2016 on payment of the outstanding dues, stamp duty and registration charges as applicable, within 90 days after receiving the payments, if any.
- v. The respondent is directed to raise demands in accordance with the recommendations of the committee report dated 08.09.2021 by Sh. Manik Sonawane, IAS (retired), as these have been explicitly addressed in the report.
- vi. The respondent shall not charge anything from the complainant which is not the part of the agreement.
38. Complaint as well as application, if any, stands disposed of accordingly.
39. File be consigned to registry.


Arun Kumar
(Chairman)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 30.01.2026