

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM.

Complaint No. 1455 of 2024
Date of Decision: 03.08.2026

Sushila Mallick and Salil Anand, residents of C-4/10,
Safdarjanj Development Area, Hauz Khas, New Delhi- 10016.

Complainants.

Versus

BPTP Limited & Countrywide Promoters Pvt. Ltd., Registered
Office at Ot-13, 3rd Floor, Next Door Parklands, Sector-76,
Faridabad, Haryana.

Respondents.

APPEARANCE

For Complainants: Mr. Sukhbir Yadav, Advocate.
For Respondents: Mr. Venket Rao, Advocate.

ORDER

This is a complaint filed by Ms. Sushila Mallick and Mr. Salil Anand, (allottees), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) against BPTP & M/s Countrywide Promoters Pvt. Ltd. (promoters/ developers).


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2. Briefly stated, according to the complainants, being relied on representation & assurance of the respondents, complainant no. 1 (Sushila Mallick) booked an apartment bearing Flat no. A-145 on Second Floor in Tower-A admeasuring 1999 sq. ft. in the project "Amstoria", marked and developed by the respondents under Construction Link Payment Plan. Total sale consideration was agreed as Rs.85,40,961/- including Basic sales price, development charges & IFMS etc. They paid Rs.10,00,000/- as booking amount.

3. That on 22.12.2010, the respondents issued an Allotment Cum Demand letter in the name of complainant Sushila Mallick confirming the allotment of aforesaid Unit and also raised a demand of Rs.4,82,003/-.

4. That on 02.02.2012, a pre-printed, unilateral, ex-facie and arbitrary Builder Buyer's Agreement/Buyer's Agreement (hereinafter called "BBA/FBA"), was executed inter-se the complainant (Sushila Mallick) and the respondents. According to Clause 5.1 of the BBA, the respondent has to give possession of the said flat within 24 months from the date of sanctioning of the building plan or execution of the FBA, whichever is later, with a

180-day grace period. The respondent has raised the demand on achievement of a landmark i.e. "At the start of construction" on 09.05.2011 and the agreement was executed on 02.02.2012, therefore the due date of possession as per BBA was on or before 02.08.2014. However, in the present complaint, 19.09.2014 is being considered as the due date of possession (ref: order dated 25.07.2022 in CRN: 1894 of 2021).

5. That on 07.10.2019, the respondents issued an offer of possession letter. The respondents in the said letter raised various unreasonable demands & in the said demand letter contains several unreasonable demands under various heads i.e. Rs.6,56,173/- under the head "Cost Escalation" and Rs.1,68,264/- under the head "Electrification and STP Charges". Moreover, the respondent increased the super area of the complainant's unit by 139 sq. ft. without any justification (the original super area was 1999 sq. ft. and the revised super area is 2138 sq. ft.).

6. That the said notice for possession contains illegal and unjustifiable demands, therefore not tenable in the eyes of the law. Furthermore, the respondents also acknowledged the delay in possession and credited a loyalty Bonus of Rs.4,27,600/- in

favour of the complainants. The respondents in their offer of possession asked for the execution of an Indemnity Deed cum Undertaking to take possession of their unit, which is against the provision of law and contains arbitrary clauses, therefore the complainants refused to execute the said Indemnity Deed cum Undertaking.

7. That they (complainants) made every possible effort to get possession of their unit and made several requests to the respondents to withdraw all the unreasonable demands being raised by them in their offer of possession, however, all went in vain since the respondents were not listening to the complainants and ignored all the requests made by the complainants. The clubhouse is not yet ready and other amenities are not yet developed/constructed in the project.

8. Citing facts as described above, the complainants have sought following compensations/reliefs: -

- i. To grant compensation for the rental cost/loss of Rs.62,64,000/- from September 2014 (due date of possession) to September 2023 (date of execution of conveyance deed) (date of handover of possession). Justification: the minimum rental value of a flat in the

same location of the project is Rs.53,000-58,000/- per month.

ii. To grant compensation on account of depreciation of Rs.18,72,081/-.

iii. To grant compensation of Rs.4,95,322/- on account of loss of interest (for non-payment of DPC from the due date of possession and using the money).

iv. To grant the compensation of Rs.10,00,000/- for causing mental agony.

v. To grant a compensation of Rs.1,00,000/- for travel expenses and loss of work as the complainants had to appear before the Hon'ble Authority (for complaint and execution) for about 20 times on their working days.

vi. To grant the litigation cost of Rs.1,25,000/-.

vii. To grant a refund of maintenance charges or compensation of Rs.2,48,831/- collected from the complainants prior to the handover of the physical possession of the unit.

viii. To grant a refund of the excess amount paid by the complainants (under protest) to the respondent along with interest.

ix. Any other relief/direction that the Adjudicating Officer deems fit and proper in the facts and circumstances of the present complaint.


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9. The respondents contested the claim of complainants by filing a written reply. It is averred that the instant complaint is untenable both in facts and law. The contractual relationship between the complainants and the respondents is governed by the terms and conditions of the agreement dated 02.02.2012. Hence the complainants are bound by the terms and conditions incorporated in the said agreement in respect of said unit.

10. That the respondents duly completed the development of the Project and offered the possession of the Unit to the complainants on 07.10.2019 after having received the occupation certificate on 24.09.2019. Along with the offer of possession, the respondents credited Rs.4,27,600/- as compensation/Loyalty bonus to the complainants as is evident from the statement of dues along with the offer of possession.

11. That the complainants had approached the Authority through complaint bearing no. 1894 of 2021. After adjudicating the matter, the reliefs were granted by the Authority vide order dated 25.07.2022. Thereafter, the complainants filed an execution petition bearing no. 8028 of 2022, whereunder, the respondents (JD therein) had filed certain objections to the calculation of the

decretal amount. The respondent had already provided compensation of Rs.4,27,600/- and had handed over the cheques amounting to Rs.33,74,634/- stating to be entire decretal amount and thereafter, the matter was referred to the Account Officer for calculation of the amount which has not been received till date. In this manner, the complete decretal amount of Rs.33,74,634/- was paid by the respondents to the complainants.

12. That during the pendency of the execution petition, the respondents had already provided the physical handover of the unit and had also executed conveyance deed in this regard. The entire allegation of the complainants revolves around the delay in the development of the unit, alleged depreciation and the alleged loss. However, the complainants have miserably failed to take into account the compensation/delay interest already credited to the complainants.

13. That no compensation can be claimed by an allottee, who intends to stay in the project and only delay possession charges can be claimed under the Real Estate (Regulation and Development) Act, 2016.

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14. Contending all this, the respondents have prayed to dismiss the complaint.

15. Both parties filed affidavits in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

16. As described earlier, unit in question was allotted in favour of complainant no. 1 only but admittedly complainant no. 2 was also added as co-allottee later on with permission of respondents.

17. According to learned counsel for complainants, due date of possession as per BBA was 02.08.2014 but respondents failed to deliver possession at agreed time, causing loss to his clients i.e. complainants. It is agreed by learned counsel for complainants that his clients approached the Authority seeking delay possession compensation for delay of delivery of the possession and that complaint has been allowed by the Authority vide order dated 25.07.2022, copy of which has been put on file. The respondents in that case have been directed to pay interest at the prescribed rate of 9.80% per annum for every month of delay from the date of possession i.e. 19.09.2014 till the date of offer of

possession i.e. 07.10.2019 plus 2 months i.e. 07.12.2019 to the complainants, whichever is earlier, apart from some other reliefs.

18. As per Section 18 (1) of Act of 2016, if promoter fails to complete or 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, (b)-----, 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 or 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.**

19. It is worth mentioning here that complainants did not wish to withdraw from the project but prayed for delayed possession compensation, by filing a complaint with the Authority. The said complaint has already been allowed. Proviso added to sub section (1) of 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 handing over of

possession, at such rate as may be prescribed. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

20. Upholding that the claim of compensation and interest can be allowed only in case the allottee seeks to withdraw from the project as per Section 18 (1) of Act of 2016, following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra"** Appeal No. 70 of 2023 decided on 20.04.2023-----;

"13.9. If were closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project."

21. Similar finding has been given by the Haryana Real Estate Appellate Tribunal in cases titled as **"Vinod Kumar vs BPTP & Anr."** (Appeal No. 1027 of 2025) and **"TATA Housing**

***Development Company Ltd. vs Nitin Singh & Anr."* (Appeal No. 737 of 2023).**

22. When complainants have already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession. Complaint in hands is thus dismissed.

23. File be consigned to record room.

Announced in open Court today i.e. 03.08.2026.

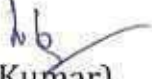


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority,
Gurugram.

Present: Mr. Sukhbir Yadav, Advocate for complainants.
Mr. Venket Rao, Advocate for respondents.

Complaint is disposed of, vide separate order today.

File be consigned to record room.


(Rajender Kumar)
Adjudicating Officer,
03.08.2026