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

Complaint No. 1042 of 2025
Date of Decision: 10.11.2026

Mr. Samarth Dwivedi & Mrs. Anita Dwivedi W/o Mr. Samarth Dwivedi, Rs/o T08-804, Lotus Boulevard, Sector-100, Gautam Budh Nagar, Noida Uttar Pradesh 201301, India.

.... Complainants.

Versus

M/s BPTP Limited, Regd. Office at: OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad, Haryana, India, 121004.

.....Respondent.

APPEARANCE

For Complainants: **Ms. Deepika Yadav, Advocate.**
For Respondent: **Mr. Venket Rao, Advocate.**

ORDER

This is a complaint filed by Mr. Samarth Dwivedi & Mrs. Anita Dwivedi (allottees), under section 31 of The Real Estate

(Regulation and Development) Act, 2016 (in brief The Act of 2016) against BPTP Ltd. (promoter/ developer).

2. Briefly stated, according to the complainants, the respondent allotted a flat no. P-1105, 11th Floor, Tower-P, admeasuring 1800 sq. ft. in its project "BPTP Spacio" in favour of Ms. Raj Bala Gupta. A Flat Buyer Agreement (FBA) was executed between them on 13.07.2011. Mrs. Raj Bala Gupta agreed to transfer said flat in their (complainants) favour. The respondent endorsed the said agreement in their favour on 07.10.2011. By this endorsement, they became legal allottees and purchasers of the said flat (property in question).

3. That respondent was liable to hand over the possession of said unit before 10.01.2014 as per FBA clause no. 3.1 (36 months from the date of first receipt), however the respondent failed to do so. The respondent offered the possession of their (complainants) unit after a delay of 7 years i.e. on 29.01.2021, however they (complainants) were shocked and surprised to see that the respondent had illegally increased super area of their (complainants) unit from 1800 sq. ft. to 1865 sq. ft. and had imposed several illegal charges in the name of cost escalation, GST, STP & Power Back-up charges etc.

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4. That respondent executed FBA which is one sided as the builder has used new trick for extracting extra money from them (complainants) and forcibly imposed escalation cost of Rs.10,96,620/- and wrongly justified it. The respondent had illegal and unjustified demands. The respondent failed to complete the project and obtain the occupancy certificate for unit in time. The respondent did not pay the balance of delayed possession charges after the adjustment of last demand and handover the physical possession of their unit.

5. That after multiple visits, the respondent finally executed conveyance deed in their (complainants) favour on 26.04.2024, however the final physical possession of the unit was not yet handed over as the unit was not in habitable condition. The respondent finally handed over the possession of their (complainants) unit after a delay of more than 10 years. The respondent again imposed several illegal charges on them.

6. That if the respondent had handed over the possession of the subject unit to them (complainants) on time, they (complainants) would have rented it years ago but due to delay caused by the respondent, they (complainants) suffered rental loss of more than a decade.

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

i. to direct the respondent to pay compensation of Rs.25,00,000/- to them (complainants) for continuous harassment for not handing over the possession, not paying the delayed possession charges on time and non-compliance of the judgment dated 13.05.2023 of the Authority;

ii. to direct the respondent to pay compensation of Rs.18,61,712.69/- towards delay in handing over possession, for the period of 30.03.2021 to 21.07.2024;

iii. to direct the respondent to pay compensation of Rs.10,00,000/- for imposing illegal charges on the complainants;

iv. to direct the respondent to provide the total rental loss of Rs.45,50,794.52/- that has been incurred by the complainants due to the delay in possession of the unit by the respondent, along with all other facilities, amenities and services as mentioned under the Brochure and Builder Buyer Agreement and assured at the time of booking;

v. to direct the respondent to provide the total loss on interest on rent to the tune of Rs.30,96,050.39/- that has been incurred to the complainants;

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vi. to direct the respondent to quash the maintenance charges and other charges amounting to Rs.3,92,280.00 illegally imposed on the complainants without handing over the actual physical possession;

vii. to direct the respondent to provide compensation of Rs.3,53,418.00 towards the amount of cheque dt. 08.11.2023;

viii. to direct the respondent to provide compensation of Rs.3,83,164.40/- towards travels expenses incurred by travelling multiple times to seek possession;

ix. to direct the respondent to provide compensation of Rs.5,00,000/- towards the legal costs incurred; and

x. to grant any other relief as may deem and proper in the facts and circumstances of the present case.

8. The respondent 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 request of the original allottee and the complainants was accepted by it (respondent) and the unit was endorsed in the name of the complainants on 07.10.2011. The contractual relationship between it (respondent) and the complainants

was governed by the terms and conditions of the said agreement. Hence, the complainants are bound by the terms and conditions incorporated in the said agreement in respect of the said unit.

9. That it (respondent) duly completed the development of the project and offered possession of the unit to the complainants on 29.01.2021 after having received the occupation certificate on 15.01.2021. At the time of offer of possession, it (respondent) has credited compensation of Rs.6,11,834/- in favour of the complainants, however the complainants being aggrieved with the quantum of compensation already credited, approached the Authority through complaint bearing no. 2739 of 2021. After adjudicating the matter, the reliefs were granted by the Authority vide order dated 10.05.2022.

10. That the conveyance deed has been executed and all claims between the parties have been satisfied. The grant of delay possession charges is already in the form of compensation and no additional compensation can be paid. 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 Act of 2016.

11. Contending all this, the respondent has prayed to dismiss the complaint.

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

13. Admittedly, the complainants had approached the Authority seeking delayed possession compensation (DPC) by filing a complaint no. 2739 of 2021. Said complaint along with 36 other complaints was allowed by the Authority vide order dated 10.05.2022 and the respondent has been directed to pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay from the date of admissibility till the offer of possession plus 2 months or the date of actual handing over of the possession of the subject flat to the complainants, whichever is earlier, apart from some other reliefs.

14. It is submitted by learned counsel for the complainants that despite said order of the Authority, it is for the Adjudicating Officer to allow compensation for delay in handing over possession, in view of section 72 of Act of 2016.

15. 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.**

16. It is worth mentioning here that the 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.

17. 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 we 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."***

18. Similar was finding of Haryana Real Estate Appellate Tribunal in case "TATA Housing Development Company Limited vs. Nitin Singhal & Surendra Kumar Singhal, Appeal No.737 of 2023 decided on February 17,2026.

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

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20. So far as claim of complainants regarding illegal charges i.e. cost escalation, GST, power back up and increase in area is concerned, the Authority has already decided these issues while deciding complaint (No.2739 of 2021 and 36 others) filed by present complainants. No reason to decide these issues again. Request in this regard is declined.

21. Complaint in hands is thus disposed of. File be consigned to the record room.

Announced in open Court.
today i.e. **on 10.11.2026.**

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