

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

Complaint no. :	5200 of 2021
Date of filing complaint:	17.01.2022
First date of hearing:	24.03.2022
Date of decision :	27.05.2022

1 Shri Vijay Kumar Thareja 2 Smt. Renu Thareja 3 Smt. Sonia Thareja 4 Shri Anand Thareja All residents of : B-11, First Floor, Greater Kailash Enclave, Part1, New Delhi 110048	Complainants
Versus	
M/s BPTP Ltd. M -11, Middle Circle , Connaught Circus, New Delhi 110001	Respondent

CORAM:

Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member

APPEARANCE:

Sh. Jagdeep Kumar	Advocate for the complainants
Sh. Venket Rao	Advocate for the respondent

ORDER

1. The above mentioned complaint was filed under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule 29 of the Haryana Real Estate(Regulation and Development) Rules, 2017 (hereinafter referred as the Rules of

2017) by the complainants named above, seeking delay possession charges besides cost of litigation of residential unit in the project known as 'Amstoria' situated in Sector 102, Gurugram against total sale consideration of Rs.99,85,554/- besides taxes etc. on account of violation of obligations of the respondent/promoter under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainants, the reproduction of the following details is must and which are as under:

A. Unit and project related details:

S.no.	Heads	Information
1.	Project name and location	'Amstoria ', Sector 102, Gurugram, Haryana.
2.	Project area	1999 sq ft. (185.712 sq mtr)
3.	Nature of the project	Residential
	a) DTCP license no.	58 of 2010 dated 03.08.2010
	b) License valid up to	02.08.2025
	c) Name of the licensee	SHIVANAND REAL ESTATE PVT LTD and 12 others.
4.	a) RERA registered/not registered	Not Registered
5.	Unit no.	A-133-GF page no. 41 of complaint
6.	Unit admeasuring	1999 sq. ft (Page no. 41 of complaint)
7.	Date of execution of the floor buyer's agreement	06.01.2012 (Page no. 55 of reply)
8.	Total consideration	Rs. 99,85,554/- (On page no. 15 of complaint)

9.	Total amount paid by the complainants	Rs. 85,67,497/- (On page no. 15 of complaint)
10.	Possession clause	<p>“Clause 5.1-the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the Date of sanctioning of the building plan or execution of floor buyer agreement whichever is later. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period to allow for filing and pursuing the occupancy certificate etc. from DTCP under the act in respect of the entire colony.</p> <p>(Emphasis supplied)</p>
11.	Due date of delivery of possession	06.01.2014 (Calculated from the date of execution of agreement as being later)
12.	Occupation certificate	Not Obtained
13.	Offer of possession	Not offered
14.	Grace period utilization	In the present case the grace period is not allowed.

B. Facts of the complainants :

2. That the real estate project named "AMSTORIA", which is the subject matter of present complaint, is situated at Sector-102 , Gurugram, therefore, the Authority has the jurisdiction to try and decide the present complaint.
3. That somewhere in the end of 2011, the respondent through its business development associate approached the complainants with an offer to invest and buy a residential floor in its proposed project, which was going to be launched namely "AMSTORIA" in the Sector-102, Gurugram (hereinafter referred to as "Said Project"). On 19.07.2011, complainants have a meeting with respondent its office where they were explained the project details and highlighted its amenities like recreational area, swimming pool, 100% power backup, 24X7 security, and round-the-clock water supply to mention a few. Relying on these details , the complainants enquired about the availability of a residential floor on ground floor which was a unit consisting area 1999 sq ft. (super area 185.712 sq. mt. constructed on 303 sq yard plot) .The respondent informed the complainants that DTCP has approved the layout plan of the project vide drawing No. DGTCP-2420 dated march 16, 2011. The respondent assured that the allotment letter and builder buyer agreement for the said project would be issued within one week of booking to be made by the complainants. The complainants booked a residential floor bearing No. A-133- GF, ground floor in the proposed project measuring approximately super area of 1999 sq. ft. in the township to be developed by respondent. Accordingly, the complainants paid Rs. 9,10,000/- through cheque bearing No 075757 dt 22.07.2011 as booking amount on 19.07.2011 against total sale

consideration of Rs. 99,85,554/- inclusive of development charges, club membership charges, power backup charges and less Rs. 90,000/- on basic sale price.

4. That the price of the said residential floor was agreed at the rate of Rs. 4582.79/- per sq. ft. prior to deduction of discount of Rs. 90,000/-. That on 19.09.2011, the respondent issued an allotment to complainants.
5. That on 06.01.2012, the respondent issued a builder buyer agreement which consisting very stringent and biased contractual terms are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement was drafted in a one-sided way, favourable to the builder and detrimental to the interest of the allottees. The complainants opposed those illegal, arbitrary, unilateral and discriminatory terms of provisional allotment letter but as there was no other option left with them if they stopped the further payments of installments then, in that case, the respondent would have forfeited 25% of total consideration value from the total amount paid by them.
6. That as per builder buyer agreement, the possession of the allotted unit after completion of the project was to be handed over within a period of 24 months with a grace period of 180 days and which comes to 06.01.2014.
7. That from the date of booking 19.07.2011 to 09.04.2013, the respondent has raised various demands for the payment of installments on complainants towards the sale consideration of said residential floor and they have duly paid and satisfied all those demands as per the buyers

- agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the buyers agreement.
8. That the complainants have paid the total called sale consideration along-with applicable taxes to the respondent for the said residential floor. As per the statement dated 01.07.2021 issued by the respondent, upon the request of the complainants, they have already paid **Rs. 85,67,497/-** towards total sale consideration and applicable taxes as on today to the respondent as demanded time to time.
 9. That the respondent send periodic construction status and made false promises every time for offering possession of residential floor. The respondent in its construction status represented falsely regarding the delivery date of possession to get the pending installments from the complainants. They wrote several emails to respondent to know the expected date of possession of residential floor, but again send a false reply.
 10. On 02.12.2021, the complainants visited the office of respondent to inform that, it is creating anomaly by not delivering the possession of said floor and by not compensating for delay possession charges at the rate of interest specified in RERA Act 2016. The complainants made clear to respondent that, if it would not compensate them at the same rate of interest, then they would approach the appropriate forum to get redressal or their grievances.
 11. That the respondent charged Rs. 206180/- on pretext of club membership whereas said facility was not even constructed by it. The respondent has also misappropriated the money paid by the complainants as sale

consideration of said floor by not delivering unit on agreed timelines and hence, this complaint as prayed above.

C. Relief sought by the complainants.

12. The complainants have sought following reliefs:

- (i) Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on Rs. 85,67,497/- paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.
- (ii) Direct the respondent to pay an amount of Rs. 55,000/- to the complainants as cost of the present litigation.

D. Written reply of the respondent

13. The relief claimed by the complainants goes beyond the jurisdiction of this Authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainants. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainants are blowing hot and cold at the same time which is not permissible under law as the same is in violation of the "Doctrine of Aprobate & Reprobate". In this regard, the respondent

reserves his right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required. Therefore, in light of the settled law, the relief sought by the complainants in the complaint under reply cannot be granted by this Authority.

14. The parties had agreed under Clause-33 of the floor buyer agreement (FBA) to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration. Admittedly, the complainants have raised dispute but did not take any steps to invoke arbitration.
15. It is submitted that the complainants failed to make timely payment for the demand raised on 24.01.2012 for casting of basement roof slab which was payable by 08.02.2012, therefore, the respondent was constrained to issue reminder letter dated 13.02.2012. The complainants still did not remit their outstanding dues. Therefore, the respondent had to issue last and final opportunity letter dated 14.03.2012. The complainants also failed to make timely payments for demand raised on 19.09.2012 for casting of second floor roof slab which was payable by 04.10.2012. Thereafter, constrained by this errant attitude of the complainants, the respondent was constrained to issue reminder letter dated 27.09.2012.
16. The complainants duly executed the FBA on 06.01.2012 out of their free will and without any undue influence or coercion. As per the FBA, it has been agreed that subject to force majeure, the possession of the floor to the complainants would be handed over 24 months from the date of sanctioning of the building plan or execution of the floor buyer's agreement (whichever is later) with an additional grace period of 180

days. The remedy in case of delay in offering possession of the unit was also agreed to between the parties as also extension of time for offering possession of the unit. The building plan was sanctioned on 05.10.2012 and the FBA was executed on 06.01.2012. Hence, the possession was to be handed over within 24 months of the sanction of the building plan along with 180 days grace period.

17. The respondent shall be liable to pay to the complainants, compensation calculated @ Rs. 10/- per sq. ft. for every month of delay for the first six months of delay, Rs. 20/- per sq. ft. for every month of delay for the next six months of delay and Rs. 30/- per sq. ft. for the built-up area of the floor per month for any delay.
18. That vide clause 5.6 of the FBA, the parties had further agreed that if the respondent fail to complete the construction of the unit due to force majeure circumstances or circumstances beyond the control of the respondent, then the respondent shall be entitled to reasonable extension of time for completion of construction.
19. It is pertinent to mention that on 16.03.2010, DTCP, Haryana (the statutory body for approval of real estate projects) issued Self-Certification policy vide Notification dated 16.03.2010. The building plans were withheld by the DTCP, Haryana despite the fact that these building plans were well within the ambit of building norms and policies. The approval of building plans under the regular scheme, was also subsequently approved.
20. The revised planning of the entire colony submitted to the DTCP has affected the infrastructure development of the entire colony including

'Amstoria Floors'. Therefore, it is submitted that due to reasons beyond the control of the respondent, the said possession timelines stood diluted.

21. Further, the Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned within the Delhi-NCR region.
22. It was communicated to the complainants vide email dated 26.02.2020 that the construction was nearing completion and the respondent was confident to handover possession of the unit in question by March 2020. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), construction came to a halt and it took some time to get the labour mobilized at the site.
23. Hence, delay if any, in completing the construction of the unit and offering possession to the various allottees is due to factors beyond the control of the respondent. All other averments made in the complaint were denied in toto.
24. 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 submissions made by the parties

E. Jurisdiction of the authority

The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

Section 11(4)(a)

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

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 complainants at a later stage.

F. Delay possession charges

25. Some of the admitted facts of the case are that the complainants booked a floor in the project of respondent known as Amstoria, sector 102, Gurugram, Haryana on 19.07.2011 for a total sale consideration of Rs. 99,85,554/- by paying a sum of Rs. 9,10,000/-. The complainants were allotted unit no. A-133-GF bearing 1999 sq. ft. in the project of the respondent detailed above. It led to execution of floor buyer agreement between the parties on 06.01.2012 and whereby details with regard to payments, dimensions of the unit, the due date of delivery and grace period etc. were mentioned. It was agreed between the parties that the possession of the unit would be delivered within a period of 24 months with a grace period of 180 days of the execution of floor buyer agreement or sanction of building plans, whichever was later. So, calculated accordingly, the possession of the unit was to be delivered by the respondent to the complainants by 06.01.2014. It is disputed that the complainants have paid a sum of Rs. 85,67,497/- to the respondent against the allotted unit. Though, it was pleaded while filling written reply that the construction of the unit was at an advanced stage but detailed of the same were not placed on the file. When the respondent failed to comply with the terms and conditions

of floor buyer agreement and offer [possession of the allotted unit to the complainants, they filed the present complaint after the passage of more than 8 years seeking possession and delay possession charges. However, during the course of proceeding, it was admitted on behalf of the respondent that the allotted unit is not available and so its possession cannot be offered to the complainants. It was further admitted by the learned counsel for respondent corroborated by its ARs Ms. Ratna Priya and Sh. Sidhant Yadav that in the absence of the allotted unit, the respondent is ready to refund the amount deposited by the complainants. The offer made in this regard by the respondent was accepted by the complainants through their counsel with a condition that if the allotted unit is not available, then they are ready to accept refund but with interest at the prescribed rates. Keeping in view the above mentioned facts, it is evident that the allotted unit is not available with the respondent builder. So, in such a situation, the respondent is directed to refund the amount of Rs. 85,67,497/- paid by the complainants from the date of each payment with interest at the prescribed rate of 9.50 p.a. within a period of 90 days.

In view of the findings detailed above no other issue remains to be taken up.

G. Directions of the Authority:

26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount i.e. Rs. 85,67,497/- received by it from the complainants alongwith interest at the rate of 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till date of this order.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)
Chairman

Dated: 27.05.2022