

**BEFORE THE HARYANA REAL ESTATE REGULATORY**

**AUTHORITY, GURUGRAM**

**Complaint no. :** 1214 of 2018  
**First date of hearing:** 28.02.2019  
**Date of decision :** 28.02.2019

Mr. Anirudh Badia  
H.no. 25, First Floor, Palam Vihar, Block C-  
1, Gurugram-122001

**Complainant**

Versus

M/s BPTP Ltd. (Through its Managing  
Director)  
Office: Plot No. 15, Udhyog Vihar Phase-4,  
NH-8, Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Subhash Chander Kush

**Member**  
**Member**

**APPEARANCE:**

Shri Sukhbir Yadav Advocate for complainant  
Shri Shanshak Bhushan and Advocates for the respondent  
Ms Sakshi Khatter

**ORDER**

1. A complaint dated 08.10.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 by the complainant Mr. Anirudh



Badia against the promoter M/s BPTP Ltd., on account of violation of the section 11(4)(a) of the Act ibid.

2. Since, the flat buyer's agreement has been executed on 10.01.2013 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

3. The particulars of the complaint are as under: -

- **Nature of the project: group housing society**
- **DTCP license no: 83 of 2008 and 94 of 2011**
- **RERA registration: 299 of 2017 dated 31.10.2017**
- **Valid upto : 12.10.2020**

1.	Name and location of the project	"TERRA", Sector-37D, Gurugram, Haryana
2.	Project area	19.74 acres
3.	Payment plan	Subvention plan as per allotment letter
4.	Date of flat buyer's agreement	10.01.2013
5.	Allotment letter	06.12.2012





6.	Unit no.	T-24-703 , 7 <sup>th</sup> floor, tower T24
7.	Area of unit	1691 sq. ft.
8.	Date of booking	07.08.2012
9.	Addendum executed on	10.02.2014
10.	Tripartite agreement executed	24.12.2012
11.	Basic sale price	Rs. 88,77,750/-
12.	Total consideration	Rs.1,10,84,084/-
13.	Total amount paid by the complainant	Rs 1,06,40,413.78/-
14.	Due date of Possession as per clause 1.6 of the flat buyer's agreement within s period of 42 months from the date of sanction of the building plan or execution of the flat buyer's agreement + clause 1.18 grace period of 180 days	<b>10.01.2017</b> <b>Date of sanction of the building plan is not available on record so due date will be taken date of execution of agreement</b>
15.	Delay in handing possession	<b>2 years 1 month and 18 days</b>
16.	Delay possession charges as per clause 6.1	Rs.5/- per sq. ft. of the super area for every month of delay



4. Taking cognizance of the complaint, the authority issued

notice to the respondent for filing reply and for appearance.

*Accordingly the respondent appeared on 28.02.2019. The reply filed by the respondent has been perused by the authority.*

Thereafter, again notice was sent to respondent but despite service of notice the respondent neither appeared nor file

*corrected vide order dated 31/05/19*

reply to the authority. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondent.

Deleted  
vide  
order  
dated  
31/05/19

**FACTS OF THE CASE:**

5. The complainant submitted that the respondent party **BPTP Limited**, is a company incorporated under the Companies Act, 1956 having its registered office at: M-11, middle circle, Connaught Circus New Delhi - 110001, corporate office : BPTP Crest, 15, Udyog Vihar, Phase - IV, NH -8, Gurgaon - 122015, Haryana (hereinafter called the **developer/ builder / respondent**) and the project in question is known as BPTP Terra, Sector -37D, Gurugram, Haryana (hereinafter called the **project**).
6. The complainant submitted that as per section 2(zk) of the Real Estate (Regulation and Development) Act, 2016, the





respondent falls under the category of "Promoter" and is bound by the duties and obligations mentioned in the said act. and is under the territorial jurisdiction of this hon'ble regulatory authority.

7. The complainant submitted that he and his family members were anxious to buy of their own independent flat to live in a safe and secure environment and this is the right time to own it for his old aged parents. Complainant got to know about **Terra** project situated at, Sector - 37D, Gurugram, promoted by a reputed **BPTP Limited** i.e. the respondent party.
8. The complainant submitted that on 08.08.2012 complainant / petitioner Mr. Anirudh Badia booked a 3 BHK flat admeasuring 1691 sq. ft. bearing flat no. T24-703 in project "Terra" in Sector - 37D, Gurgaon and paid Rs. 6,00,000/- (six lakhs) booking amount along with application form. The flat was purchased under the subvention payment plan for sale consideration of Rs. 1,10,84,084/- (one crore, ten lakhs eighty four thousand and eighty four)



9. The complainant submitted that on 06.12.2012, respondent issued a provisional allotment letter in favour complainant of for flat no. T24- 703 in project "Terra" in Sector -37D, Gurgaon.
10. The complainant submitted that on 13.01.2013, A preprinted flat buyer's agreement and an addendum to the buyer's agreement was executed between complainant and BPTP Limited & Countrywide Promoters Pvt. Ltd. As per flat buyer's agreement, respondent have to give the possession of flat within a period of 42 months i.e. 10.06.2016.
11. The complainant submitted that the complainant / petitioner has taken loan of Rs. 88,67,000/- (eighty eight lakhs sixty seven thousand) from HDFC Ltd. against the subject flat and paid demand of Rs. 38,63,895/- (thirty eight lakhs sixty three thousand eight hundred and ninety five) under **interest subvention payment plan on 31.01.2013. As per tripartite agreement respondent / builder have to bear the liability of interest till 30.06.2015.**
12. The complainant submitted that he continued to pay the remaining installment as per the payment schedule of the flat





buyer's agreement and have already paid the more than **95% amount i.e Rs. 1,06,04,206.78/- (one crore six lakhs four thousand two hundred six and seventy eight passa till date 10.11.2016** along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, he raised his grievance to respondent(s). Though complainant was always ready and willing to pay the remaining installments provided that there is progress in the construction of flat.

13. The complainant submitted that since June, 2016 complainant and his father (GPA Holder) regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flats, but all in vain, in spite of several visits by the complainant. The complainant never been able to understand/know the actual status of construction. Though towers seem to be built up but no progress is observed on finishing and landscaping work.

14. That the main grievance of the complainant in the present complaint is that in spite of complainant paid more than 95%



of the actual amounts of flats and ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of flat.

15. The complainant submitted that the complainant had purchased the flat with intention that after purchase, his family will live in own flat. That it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscaped lawns, club/ pool, school, EWS etc. as shown in brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e. by June 2015.

16. That the work on other amenities, like external, internal MEP (services) not yet completed. Now it is more than 6 years from the date of booking and even the constructions of towers are not completed, clearly it shows the negligence towards the builder. As per project site conditions it seems that project takes further more than one year to complete in all respect, subject to willingness of respondent to complete the project.





17. The complainant submitted that for the first time cause of action for the present complaint arose **in January, 2013**, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose **in 2016**, when the respondent party failed to handover the possession of the flat as per the buyer agreement. Further the cause of action again arose on various occasions, including on: **a) November 2016; b) January 2017; c) June, 2017, d) November, 2017; e) March. 2018, and on many times till date**, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

18. The complainant submitted that the complainant is entitled to get refund the paid amount along with interest @ 18% per annum from date of booking to till the date of refund. The



complainant is also entitled to get **Rs. 1,00,000/- (one lakh)** towards the cost of litigation. The complainants are also entitled for any other relief which they are found entitled by this hon'ble authority.

**ISSUES RAISED BY THE COMPLAINANTS:**

**19. The following issues have been raised by the complainant:**

- i. Whether the developer has violated the terms and condition of the flat buyer's agreement?
- ii. Whether complainant is entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act.?
- iii. Whether there is any reasonable justification for not completing the construction of the project?
- iv. Whether there has been deliberate or otherwise, misrepresentation on the part of developer for delay in giving possession?
- v. Whether the complainant is entitled for refund of his entire deposited amount?





**RELIEF SOUGHT BY THE COMPLAINANT:**

20. In view of the facts mentioned the following reliefs have been sought by the complainants:

- i. Respondent party may kindly be directed to refund the amount Rs. 1,06,04,206.78/- (one crore six lakhs four thousand two hundred six and seventy eight passa paid by the complainant to the respondent party as installments towards purchase of flat along with interest @ 18% per annum compounded from the date of deposit under section 18 & 19(4) of RERA Act.
- ii. Respondent party may kindly be directed to pay an amount of Rs.1,00,000/- (one lakh) as litigation expenses; **(Justification:- Cost of litigation).**
- iii. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.



- iv. Any other relief / direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint.
- v. That in the interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

**REPLY ON BEHALF OF RESPONDENT**

21. The respondent submitted that the present complaint under reply has been filed without application of mind to the facts and circumstances and the controversy involved in the present case and is liable to be dismissed in the interest of justice. It is further submitted that the present complaint filed by the





complainant is wholly misconceived, erroneous, unjustified and untenable in law besides being hasty, extraneous and have been filed in order to unlawfully gain at the expense of the respondent. It is further submitted that the averments made in the present complaint are denied for being false and misleading except to the extent specifically admitted herein or are in consonance with the submissions made hereunder.

22. The respondent submitted that the respondent had diligently applied for registration of the project in question i.e. "Terra" located at Sector-37D, Gurugram including Towers-T-20 to T-25 & EWS before this hon'ble authority and accordingly, registration certificate dated 13.10.2017 was issued by this hon'ble authority wherein the registration for the said project is valid for a period commencing from 13.10.2017 to 12.10.2020.

23. The respondent submitted that the complainant has approached this hon'ble authority with unclean hands i.e. by concealing and misrepresenting facts material to the present purported complaint. It is submitted that the Hon'ble Supreme Court in a plethora of cases has held that anyone approaching





court must come with clean hands as any concealment/misrepresentation of facts amount to fraud not only on the respondent but also on the court and as such, the complaint warrants dismissal without any further adjudication. In this regard, reference may be made to the following:

- i. It is submitted that the complainant has failed to disclose before this hon'ble authority that the complainant has approached the respondent through a broker namely "Earth Realty" after conducting due diligence and after satisfying himself about all the aspects of his investment, for booking a unit in the project of the respondent. The complainant has further failed to disclose that the respondent has also offered an inaugural discount of Rs. 750/- sq. ft. to the complainant.
- ii. The complainant has concealed from this hon'ble authority that the complainant has been a habitual defaulter in making payments of the instalments as and when demanded by the respondent in terms of the agreed payment plan. The complainant has also concealed from





this hon'ble authority about various reminder letters sent to the complainant for payment of the outstanding amount.

iii. The complainant has further concealed from this hon'ble authority regarding various construction updates being shared by the respondent to the complainant.

iv. The complainant has further concealed from this hon'ble authority that under the subvention payment plan opted by the complainant, the respondent has disbursed an amount of Rs. 8,81,454.08/- to the bank on behalf of the complainant.

24. The respondent submitted that the relief(s) sought by the complainant are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. It is further submitted that the complainant has entered into the said agreement with the respondent with open eyes and is bound by the same. It is further submitted that the relief(s) sought by the complainant





travel way beyond the four walls of the agreement duly executed between the parties. It is submitted that the complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement, including clause-6.1 which provides for delayed penalty in case of delay in delivery of possession of the said flat by the respondent.

25. It is further submitted that the detailed relief claimed by the complainant goes beyond the jurisdiction of this hon'ble authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainant.
26. It is further submitted that, the above submission implies that while entering into the agreement, the complainant had the knowledge that there may arise a situation whereby the possession could not be granted to the complainant as per the commitment period and in order to protect and/or safeguard the interest of the complainant, the respondents have provided reasonable remedy under clause-6.1, and, the complainant having accepted to the same in totality, cannot







claim anything beyond what has been reduced to in writing between the parties.

27. In this regard, reference may be made to section-74 of the Indian Contracts Act, 1872, which clearly spells out the law regarding sanctity and binding nature of the ascertained amount of compensation provided in the agreement and further specifies that any party is not entitled to anything beyond the same. Therefore, the complainant, if at all, is only entitled to compensation under clause-6.1 of the agreement.

28. The respondent submitted that it is very important to note that the Rule 8 deals with documents executed by and between promoter and allottee after registration of the project by the promoter, however with respect to the documents including agreement for sale/ flat buyers agreement/plot buyers agreement executed prior to the registration of the project which falls within the definition of "Ongoing Projects" explained herein below and where the promoter has already collected an amount in excess of 10 percent of the total price Rule 8 is not applicable. The aforesaid view stated in the preceding para is clarified in the rules published by the state



of Haryana, the explanation given at the end of the prescribed agreement for sale in annexure A of the rules, it has been clarified that the developer shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing agreement executed with its customers.

29. The respondent submitted that the proposed timelines for possession being within 42 months from the date of sanction of building plans or execution of FBA, whichever is later, along with 180 days of grace period was subject to *force majeure* circumstances and circumstances beyond control of the respondent. However, the complainant has indulged in selective reading of the clauses of the FBA whereas the FBA ought to be read as a whole. It is further submitted that the construction is going on in full swing and the respondent is making every endeavor to hand over the possession at the earliest. However, the following are noteworthy:-

The parties had, vide clause 5.1 of the FBA [clause G (1) of the booking application], duly agreed that subject to force majeure and compliance by the complainant of all the terms and





conditions of the FBA, the respondent proposes to hand over possession of the flat to the complainant within 42 months from the date of sanction of the building plans or execution of the FBA, whichever is later along with a further grace period of 180 days.

30. The respondent submitted that the proposed timelines for possession have been diluted due to defaults in making timely payment of installments by various allottees of the project **Terra** including the complainant herein. In this regard, reference may be made to the following:

- i. That the project in question was launched by the respondent in August 2012. It is submitted that while the total number of flats sold in the project "Terra" is 401, for non-payment of dues, 78 bookings/ allotments have since been cancelled. Further, the number of customers of the project "Terra" who are in default of making payments for more than 365 days are 125. Hence, there have been huge defaults in making payments of various instalments by large number of applicants in the Project.



- ii. That it is well known fact that the projected timelines for possession are based on the cash flow. It was not in the contemplation of the respondent that the allottees would hugely default in making payments and hence, cause cash flow crunch in the project.
- iii. That vide clause 7.3 of the FBA, an option to cancel the allotment is available to the complainant, however, acceptance of the same is on discretion of the respondent. It is pertinent to mention herein that the project in question is at advance stage of construction. It is submitted that the respondent shall stand by its commitment as per the terms of FBA. It is further submitted that the respondent has already invested huge money and at this stage cancelling the allotment is not acceptable.
- iv. That vide clause-G.2 of the application for allotment, which was later reiterated vide clause 6.1 of the FBA, it was duly agreed between the parties that subject to the conditions mentioned therein, in case the respondent fails to hand over possession within 42 months from the





date of sanctioning of the building plans or execution of FBA, whichever is later along with 180 days of grace period, the respondent shall be liable to pay to the complainant compensation calculated @ Rs.5 per sq. ft. for every month of delay. It is further submitted that the parties had agreed the penalty in case of delay in offering possession prior to entering into the transaction. Prior to entering into the transaction, the parties had further agreed vide clause G.2 of the booking application that in case the complainants fail or default in making timely payment of any of the instalments, then the complainants would not be eligible for delay compensation and the said understanding was also reiterated in clause 6.1 of the FBA. Thus, the understanding between the parties regarding compensation for delay in offering of possession had been agreed and accepted prior to entering into the transaction.



31. The respondent submitted that the respondent had diligently applied for registration of the project in question i.e. "Terra"

located at Sector-37D, Gurugram including Towers-T-20 to T-25 & EWS before this hon'ble authority and accordingly, registration certificate dated 13.10.2017 was issued by this hon'ble authority wherein the registration for the said project is valid for a period commencing from 13.10.2017 to 12.10.2020.

32. It is submitted that with regard to the construction of the tower in which the unit in question is located, work such as structure, brick work, door frames, internal and external plaster, IPS flooring have been completed. It is further submitted that the status of the construction in tower T-24 is at an advanced stage and for the remaining construction, work is going at full pace at the site and the respondent shall be handing over the possession shortly.

#### **DETERMINATION OF ISSUES**

33. After considering the facts submitted by the complainant, respondent and perusal of record on file, the issue wise findings are as hereunder:





34. With respect to **first and second issues** raised by the complainant the authority came across clause 1.6 of flat buyer's agreement, the possession of the said apartment was to be handed over within period of 42 months from the date of sanction of the building plan or execution of the flat buyer's agreement whichever is later. In present case due date of possession will be calculated from the date of execution of flat buyer's agreement. The flat buyer's agreement was executed on 10.01.2013. Therefore, the due date of possession comes out to be 10.01.2017 and the possession has been delayed by **2 years 1 month and 18 days** till the date of decision.

35. Therefore, under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate



(Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. **10.01.2017** upto the date of offer of possession.

36. With respect to **third issue** raised by complainant, the authority is of view that there is no reasonable justification on part of the respondent for not completing the construction of the project.

37. With respect to **fourth issue** raised by complainant, the complainant has not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issue become infructuous.

38. With respect to **fifth issue** raised by the complainant, the project is registered vide RERA registration: **299 of 2017** dated **31.10.2017**, valid upto: **12.10.2020** with the authority. The authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will





also have adverse effect on the other allottees. Therefore, the relief sought by the complainant cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainant shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.

**FINDINGS OF THE AUTHORITY:**

39. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

40. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

41. The case of the complainant is that he had booked a unit no. T-24-703, in project "TERRA "Sector 37-D, Gurugram, flat buyer's agreement to this effect was executed inter-se the parties on 10.01.2013. By virtue of clause 1.6, respondent was duty bound to deliver the unit to the complainant within a period of 42 months from the date of sanction of building plans or execution of agreement which comes out to be **10.01.2017**. Till date, the respondent has not given the possession to the complainant. The project is registered project and revised date of possession is 12.10.2020.

42. Considering the facts and circumstances of the matter, the authority is of the considered view that the complainant is entitled for delayed possession charges at the prescribed rate of interest as per terms of section 18(1) of Real Estate (Regulation and Development) Act, 2016.





43. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
44. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

45. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the respondent on the due date of possession i.e. 10.01.2017 till offer of possession to the complainant.



- ii. The interest accrued so far shall be paid within a period of 90 days of this order and thereafter on 10<sup>th</sup> of subsequent month.
- iii. Pre-EMI paid so far by the respondent shall be adjusted at the time of final payments.
- iv. Respondent is also directed to pay the penalty imposed on him with the authority within 30 days.
46. The order is pronounced.
47. Case file be consigned to the registry.

  
(Samir Kumar)  
Member

  
(Subhash Chander Kush)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.02.2019

Corrected judgement uploaded on 10.06.2019





**BEFORE THE HARYANA REAL ESTATE REGULATORY**

**AUTHORITY, GURUGRAM**

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**First date of hearing: 28.02.2019**

**Date of decision : 28.02.2019**

Mr. Anirudh Badia  
H.no. 25, First Floor, Palam Vihar, Block C-  
1, Gurugram-122001

**Complainant**

Versus

M/s BPTP Ltd. (Through its Managing  
Director)  
Office: Plot No. 15, Udhog Vihar Phase-4,  
NH-8, Gurugram

**Respondent**

**CORAM:**

Shri Samir Kumar  
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**Member  
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**APPEARANCE:**

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Shri Shanshak Bhushan and Advocates for the respondent  
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Badia against the promoter M/s BPTP Ltd., on account of violation of the section 11(4)(a) of the Act *ibid*.

2. Since, the flat buyer's agreement has been executed on 10.01.2013 i.e. prior to the commencement of the Real Estate (Regulation And Development) Act, 2016, therefore, the penal proceedings cannot initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of contractual obligation on the part of the promoter/respondent in terms of section 34(f) of the Real Estate (Regulation and Development) Act, 2016

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- **DTCP license no: 83 of 2008 and 94 of 2011**
- **RERA registration: 299 of 2017 dated 31.10.2017**
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reply to the authority. As the respondent has failed to submit the reply in such period, despite due and proper service of notices, the authority may proceed ex-parte on the basis of the facts available on record and adjudge the matter in the light of the facts adduced by the complainant in its pleading. Therefore, case is being proceeded ex-parte against the respondent.

**FACTS OF THE CASE:**

5. The complainant submitted that the respondent party **BPTP Limited**, is a company incorporated under the Companies Act, 1956 having is registered office at: M-11, middle circle canaught circus New Delhi – 110001, corporate office : BPTP Crest, 15, Udyog Vihar, Phase – IV, NH -8, Gurgaon – 122015, Haryana (hereinafter called the **developer/ builder / respondent**) and the project in question is known as BPTP Terra, Sector -37D, Gurugram, Haryana (hereinafter called the **project**) .
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respondent falls under the category of “Promoter” and is bound by the duties and obligations mentioned in the said act. and is under the territorial jurisdiction of this hon’ble regulatory authority.

7. The complainant submitted that he and his family members were anxious to buy of their own independent flat to live in a safe and secure environment and this is the right time to own it for his old aged parents. Complainant got to know about **Terra** project situated at, Sector – 37D, Gurugram, promoted by a reputed **BPTP Limited** i.e. the respondent party.
8. The complainant submitted that on 08.08.2012 complainant / petitioner Mr. Anirudh Badia booked a 3 BHK flat admeasuring 1691 sq. ft. bearing flat no. T24-703 in project “Terra” in Sector – 37D, Gurgaon and paid Rs. 6,00,000/- (six lakhs) booking amount along with application form. **The flat was purchased under the subvention payment plan for sale consideration of Rs. 1,10,84,084/- (one crore, ten lakhs eighty four thousand and eighty four)**



9. The complainant submitted that on 06.12.2012, respondent issued a provisional allotment letter in favour complainant of for flat no. T24- 703 in project “Terra” in Sector -37D, Gurgaon.
10. The complainant submitted that on 13.01.2013, A preprinted flat buyer’s agreement and an addendum to the buyer’s agreement was executed between complainant and BPTP Limited & Countrywide Promoters Pvt. Ltd. As per flat buyer’s agreement, respondent have to give the possession of flat within a period of 42 months i.e. 10.06.2016.
11. The complainant submitted that the complainant / petitioner has taken loan of Rs. 88,67,000/- (eighty eight lakhs sixty seven thousand) from HDFC Ltd. against the subject flat and paid demand of Rs. 38,63,895/- (thirty eight lakhs sixty three thousand eight hundred and ninety five) under **interest subvention payment plan on 31.01.2013. As per tripartite agreement respondent / builder have to bear the liability of interest till 30.06.2015.**
12. The complainant submitted that he continued to pay the remaining installment as per the payment schedule of the flat





buyer's agreement and have already paid the more than **95% amount i.e Rs. 1,06,04,206.78/- (one crore six lakhs four thousand two hundred six and seventy eight passa till date 10.11.2016** along with interest and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject flat for a long time, he raised his grievance to respondent(s). Though complainant was always ready and willing to pay the remaining installments provided that there is progress in the construction of flat.

13. The complainant submitted that since June, 2016 complainant and his father (GPA Holder) regularly visiting to the office of respondent as well as construction site and making efforts to get the possession of allotted flats, but all in vain, in spite of several visits by the complainant. The complainant never been able to understand/know the actual status of construction. Though towers seem to be built up but no progress is observed on finishing and landscaping work.

14. That the main grievance of the complainant in the present complaint is that in spite of complainant paid more than 95%



of the actual amounts of flats and ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of flat.

15. The complainant submitted that the complainant had purchased the flat with intention that after purchase, his family will live in own flat. That it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscaped lawns, club/ pool, school, EWS etc. as shown in brochure at the time of sale, would be handed over to the complainant as soon as construction work is complete i.e. by June 2015.

16. That the work on other amenities, like external, internal MEP (services) not yet completed. Now it is more than 6 years from the date of booking and even the constructions of towers are not completed, clearly it shows the negligence towards the builder. As per project site conditions it seems that project takes further more than one year to complete in all respect, subject to willingness of respondent to complete the project.





17. The complainant submitted that for the first time cause of action for the present complaint arose **in January, 2013**, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose **in 2016**, when the respondent party failed to handover the possession of the flat as per the buyer agreement. Further the cause of action again arose on various occasions, including on: **a) November 2016; b) January 2017; c) June, 2017, d) November, 2017; e) March, 2018, and on many times till date**, when the protests were lodged with the respondent party about its failure to deliver the project and the assurances were given by them that the possession would be delivered by a certain time. The cause of action is alive and continuing and will continue to subsist till such time as this hon'ble authority restrains the respondent party by an order of injunction and/or passes the necessary orders.

18. The complainant submitted that the complainant is entitled to get refund the paid amount along with interest @ 18% per annum from date of boosing to till the date of refund. The



complainant is also entitled to get **Rs. 1,00,000/- (one lakh)** towards the cost of litigation. The complainants are also entitled for any other relief which they are found entitled by this hon'ble authority.

**ISSUES RAISED BY THE COMPLAINANTS:**

**19. The following issues have been raised by the complainant:**

- i. Whether the developer has violated the terms and condition of the flat buyer's agreement?
- ii. Whether complainant is entitled for interest for every month of delay from due date of possession till the handing over of the possession under section 18 of RERA Act.?
- iii. Whether there is any reasonable justification for not completing the construction of the project?
- iv. Whether there has been deliberate or otherwise, misrepresentation on the part of developer for delay in giving possession?
- v. Whether the complainant is entitled for refund of his entire deposited amount?





**RELIEF SOUGHT BY THE COMPLAINANT:**

20. In view of the facts mentioned the following reliefs have been sought by the complainants:

- i. Respondent party may kindly be directed to refund the amount Rs. 1,06,04,206.78/- (one crore six lakhs four thousand two hundred six and seventy eight passa paid by the complainant to the respondent party as installments towards purchase of flat along with interest @ 18% per annum compounded from the date of deposit under section 18 & 19(4) of RERA Act.
- ii. Respondent party may kindly be directed to pay an amount of Rs.1,00,000/- (one lakh) as litigation expenses; **(Justification:- Cost of litigation).**
- iii. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.



- iv. Any other relief / direction which the hon'ble authority deems fit and proper in the facts & circumstances of the present complaint.
- v. That in the interest of justice, this authority should pass strict and stringent orders against errant promoters and developers who take huge investments from innocent investors and then deny them the right to take possession as agreed at the time of sale. The purpose and legislative intent behind setting up this authority should also be kept into consideration while deciding the present complaint as the respondent has not only treated the complainant unfairly but many other such buyers.

**REPLY ON BEHALF OF RESPONDENT**



21. The respondent submitted that the present complaint under reply has been filed without application of mind to the facts and circumstances and the controversy involved in the present case and is liable to be dismissed in the interest of justice. It is further submitted that the present complaint filed by the



complainant is wholly misconceived, erroneous, unjustified and untenable in law besides being hasty, extraneous and have been filed in order to unlawfully gain at the expense of the respondent. It is further submitted that the averments made in the present complaint are denied for being false and misleading except to the extent specifically admitted herein or are in consonance with the submissions made hereunder.

22. The respondent submitted that the respondent had diligently applied for registration of the project in question i.e. "Terra" located at Sector-37D, Gurugram including Towers-T-20 to T-25 & EWS before this hon'ble authority and accordingly, registration certificate dated 13.10.2017 was issued by this hon'ble authority wherein the registration for the said project is valid for a period commencing from 13.10.2017 to 12.10.2020.

23. The respondent submitted that the complainant has approached this hon'ble authority with unclean hands i.e. by concealing and misrepresenting facts material to the present purported complaint. It is submitted that the Hon'ble Supreme Court in a plethora of cases has held that anyone approaching



court must come with clean hands as any concealment/misrepresentation of facts amount to fraud not only on the respondent but also on the court and as such, the complaint warrants dismissal without any further adjudication. In this regard, reference may be made to the following:

i. It is submitted that the complainant has failed to disclose before this hon'ble authority that the complainant has approached the respondent through a broker namely "Earth Realty" after conducting due diligence and after satisfying himself about all the aspects of his investment, for booking a unit in the project of the respondent. The complainant has further failed to disclose that the respondent has also offered an inaugural discount of Rs. 750/- sq. ft. to the complainant.

ii. The complainant has concealed from this hon'ble authority that the complainant has been a habitual defaulter in making payments of the instalments as and when demanded by the respondent in terms of the agreed payment plan. The complainant has also concealed from





this hon'ble authority about various reminder letters sent to the complainant for payment of the outstanding amount.

iii. The complainant has further concealed from this hon'ble authority regarding various construction updates being shared by the respondent to the complainant.

iv. The complainant has further concealed from this hon'ble authority that under the subvention payment plan opted by the complainant, the respondent has disbursed an amount of Rs. 8,81,454.08/- to the bank on behalf of the complainant.

24. The respondent submitted that the relief(s) sought by the complainant are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. It is further submitted that the complainant has entered into the said agreement with the respondent with open eyes and is bound by the same. It is further submitted that the relief(s) sought by the complainant



travel way beyond the four walls of the agreement duly executed between the parties. It is submitted that the complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement, including clause-6.1 which provides for delayed penalty in case of delay in delivery of possession of the said flat by the respondent.

25. It is further submitted that the detailed relief claimed by the complainant goes beyond the jurisdiction of this hon'ble authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainant.

26. It is further submitted that, the above submission implies that while entering into the agreement, the complainant had the knowledge that there may arise a situation whereby the possession could not be granted to the complainant as per the commitment period and in order to protect and/or safeguard the interest of the complainant, the respondents have provided reasonable remedy under clause-6.1, and, the complainant having accepted to the same in totality, cannot





claim anything beyond what has been reduced to in writing between the parties.

27. In this regard, reference may be made to section-74 of the Indian Contracts Act, 1872, which clearly spells out the law regarding sanctity and binding nature of the ascertained amount of compensation provided in the agreement and further specifies that any party is not entitled to anything beyond the same. Therefore, the complainant, if at all, is only entitled to compensation under clause-6.1 of the agreement.

28. The respondent submitted that it is very important to note that the Rule 8 deals with documents executed by and between promoter and allottee after registration of the project by the promoter, however with respect to the documents including agreement for sale/ flat buyers agreement/plot buyers agreement executed prior to the registration of the project which falls within the definition of "Ongoing Projects" explained herein below and where the promoter has already collected an amount in excess of 10 percent of the total price Rule 8 is not applicable. The aforesaid view stated in the preceding para is clarified in the rules published by the state



of Haryana, the explanation given at the end of the prescribed agreement for sale in annexure A of the rules, it has been clarified that the developer shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing agreement executed with its customers.

29. The respondent submitted that the proposed timelines for possession being within 42 months from the date of sanction of building plans or execution of FBA, whichever is later, along with 180 days of grace period was subject to *force majeure* circumstances and circumstances beyond control of the respondent. However, the complainant has indulged in selective reading of the clauses of the FBA whereas the FBA ought to be read as a whole. It is further submitted that the construction is going on in full swing and the respondent is making every endeavor to hand over the possession at the earliest. However, the following are noteworthy:-

The parties had, vide clause 5.1 of the FBA [clause G (1) of the booking application], duly agreed that subject to force majeure and compliance by the complainant of all the terms and



conditions of the FBA, the respondent proposes to hand over possession of the flat to the complainant within 42 months from the date of sanction of the building plans or execution of the FBA, whichever is later along with a further grace period of 180 days.

30. The respondent submitted that the proposed timelines for possession have been diluted due to defaults in making timely payment of installments by various allottees of the project **Terra** including the complainant herein. In this regard, reference may be made to the following:

- i. That the project in question was launched by the respondent in August 2012. It is submitted that while the total number of flats sold in the project "Terra" is 401, for non- payment of dues, 78 bookings/ allotments have since been cancelled. Further, the number of customers of the project "Terra" who are in default of making payments for more than 365 days are 125. Hence, there have been huge defaults in making payments of various instalments by large number of applicants in the Project.





- ii. That it is well known fact that the projected timelines for possession are based on the cash flow. It was not in the contemplation of the respondent that the allottees would hugely default in making payments and hence, cause cash flow crunch in the project.
- iii. That vide clause 7.3 of the FBA, an option to cancel the allotment is available to the complainant, however, acceptance of the same is on discretion of the respondent. It is pertinent to mention herein that the project in question is at advance stage of construction. It is submitted that the respondent shall stand by its commitment as per the terms of FBA. It is further submitted that the respondent has already invested huge money and at this stage cancelling the allotment is not acceptable.
- iv. That vide clause-G.2 of the application for allotment, which was later reiterated vide clause 6.1 of the FBA, it was duly agreed between the parties that subject to the conditions mentioned therein, in case the respondent fails to hand over possession within 42 months from the



date of sanctioning of the building plans or execution of FBA, whichever is later along with 180 days of grace period, the respondent shall be liable to pay to the complainant compensation calculated @ Rs.5 per sq. ft. for every month of delay. It is further submitted that the parties had agreed the penalty in case of delay in offering possession prior to entering into the transaction. Prior to entering into the transaction, the parties had further agreed vide clause G.2 of the booking application that in case the complainants fail or default in making timely payment of any of the instalments, then the complainants would not be eligible for delay compensation and the said understanding was also reiterated in clause 6.1 of the FBA. Thus, the understanding between the parties regarding compensation for delay in offering of possession had been agreed and accepted prior to entering into the transaction.



31. The respondent submitted that the respondent had diligently applied for registration of the project in question i.e. "Terra"

located at Sector-37D, Gurugram including Towers-T-20 to T-25 & EWS before this hon'ble authority and accordingly, registration certificate dated 13.10.2017 was issued by this hon'ble authority wherein the registration for the said project is valid for a period commencing from 13.10.2017 to 12.10.2020.

32. It is submitted that with regard to the construction of the tower in which the unit in question is located, work such as structure, brick work, door frames, internal and external plaster, IPS flooring have been completed. It is further submitted that the status of the construction in tower T-24 is at an advanced stage and for the remaining construction, work is going at full pace at the site and the respondent shall be handing over the possession shortly.

#### DETERMINATION OF ISSUES

33. After considering the facts submitted by the complainant, respondent and perusal of record on file, the issue wise findings are as hereunder:





34. With respect to **first and second issues** raised by the complainant the authority came across clause 1.6 of flat buyer's agreement, the possession of the said apartment was to be handed over within period of 42 months from the date of sanction of the building plan or execution of the flat buyer's agreement whichever is later. In present case due date of possession will be calculated from the date of execution of flat buyer's agreement. The flat buyer's agreement was executed on 10.01.2013. Therefore, the due date of possession comes out to be 10.01.2017 and the possession has been delayed by **2 years 1 month and 18 days** till the date of decision.

35. Therefore, under section 18(1) proviso to pay interest to the complainant, at the prescribed rate, for every month of delay till the handing over of possession. The prayer of the complainant regarding payment of interest at the prescribed rate for every month of delay, till handing over of possession on account of failure of the promoter to give possession in accordance with the terms of the agreement for sale as per provisions of section 18(1) is hereby allowed. The authority issues directions to the respondent u/s 37 of the Real Estate



(Regulation and Development) Act, 2016 to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the promoter on the due date of possession i.e. **10.01.2017** upto the date of offer of possession.

36. With respect to **third issue** raised by complainant, the authority is of view that there is no reasonable justification on part of the respondent for not completing the construction of the project.
37. With respect to **fourth issue** raised by complainant, the complainant has not produced any material document and has only made assertions in issues. Thus, without any proof or document the said issue become infructuous.
38. With respect to **fifth issue** raised by the complainant, the project is registered vide RERA registration: **299 of 2017 dated 31.10.2017, valid upto: 12.10.2020** with the authority. The authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will



also have adverse effect on the other allottees. Therefore, the relief sought by the complainant cannot be allowed. However, as per proviso to section 18(1) of the Act, the complainant shall be paid interest for every month of delay calculated at the prescribed rate of 10.75% per annum till the handing over of the possession.

#### FINDINGS OF THE AUTHORITY:

39. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

40. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

41. The case of the complainant is that he had booked a unit no. T-24-703, in project "TERRA "Sector 37-D, Gurugram, flat buyer's agreement to this effect was executed inter-se the parties on 10.01.2013. By virtue of clause 1.6, respondent was duty bound to deliver the unit to the complainant within a period of 42 months from the date of sanction of building plans or execution of agreement which comes out to be **10.01.2017**. Till date, the respondent has not given the possession to the complainant. The project is registered project and revised date of possession is 12.10.2020.

42. Considering the facts and circumstances of the matter, the authority is of the considered view that the complainant is entitled for delayed possession charges at the prescribed rate of interest as per terms of section 18(1) of Real Estate (Regulation and Development) Act, 2016.



43. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon the promoter.
44. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions of the Act and to fulfil its obligations.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

45. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issue the following direction to the buyer in the interest of justice and fair play:

- i. The respondent is directed to pay interest at the prescribed rate of 10.75% per annum on the amount deposited by the complainant with the respondent on the due date of possession i.e. 10.01.2017 till offer of possession to the complainant.



- ii. The interest accrued so far shall be paid within a period of 90 days of this order and thereafter on 10<sup>th</sup> of subsequent month.
- iii. Pre-EMI paid so far by the respondent shall be adjusted at the time of final payments.
- iv. Respondent is also directed to pay the penalty imposed on him with the authority within 30 days.

46. The order is pronounced.

47. Case file be consigned to the registry.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram



Dated: 28.02.2019

Judgement uploaded on 26.03.2019