

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

**Complaint no. : 2435 of 2018**  
**Date of First hearing: 06.08.2019**  
**Date of decision : 06.08.2019**

Ms. Radhika Tulsian,  
W/o Sh. Arun Kumar Tulsian  
R/o. J-1171, First Floor, Palam Vihar,  
Gurugram (Haryana)- 122017.

**Complainant**

Versus

1. M/s BPTP Ltd.,  
2. M/s. Countrywide Promoters Pvt. Ltd.  
Both Office at: M-11, Middle Circle,  
Cannaught Circus,  
New Delhi - 110001.

**Respondents**

**CORAM:**

N.K.Goel  
(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer(Petitions)  
(Haryana Real Estate Regulatory Authority, Gurugram)

(Authorised by resolution no.  
HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July  
2019)

**APPEARANCE:**

Shri Vijay Kumar Sharma  
Smt. Sakshi Khatter  
Shri Siddhant Yadav

Advocate for the complainant  
Advocate for the respondent  
Authorised representative on  
behalf of company

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**EXPARTE ORDER**

1. The present complaint relates to a flat buyer agreement dated 29.12.2012 executed between the complainant and the respondents promoters, registered with this authority vide registration no. 7 of 2018 dated 03.01.2018, in respect of flat measuring 1470 sq. ft. super area bearing no. T2- 1103, 11<sup>th</sup> floor, tower T 2 of the project, namely "Park Generations" situated in Sector 37 D, Gurugram, (in short, the subject flat) for a basic sale price of Rs. 53,80,200/- and other charges and the complainant opted for construction linked payment plan.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Park Generations", Sector 37D, Gurugram.
2.	Total area of the project	43.558 acres
3.	DTCP license no.	83 of 2008 and additional license no. 94 of 2011.
4.	Nature of real estate project	Group housing.
5.	Flat/unit no.	T2-1103, 11 <sup>th</sup> floor in tower T2.
6.	Measuring area of the allotted flat	1,470 sq. ft.
7.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.

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8.	Date of completion as per RERA registration certificate.	30.4.2018 (Tower T-76, 17 & 19 ) and 30.1 1.2018(Tower T-14, 15 &18)
9.	Date of allotment letter	17.12.2012 ( <b>Annex C1</b> )
10.	Date of execution of flat buyer agreement	29.12.2012 ( <b>Annex C2</b> )
11.	Payment Plan	Construction linked payment plan ( <b>Pg.53 of the complaint</b> )
12.	Basic sale price of the allotted unit	Rs.53,80,200/- ( <b>Pg. 29 of the complaint</b> )
13.	Total consideration as per statement of accounts cum invoice	Rs. 80,18,525.92 paise ( <b>Pg.69 of the complaint</b> )
14.	Total amount paid by the complainants till date	Rs. 68,09,703.65 paise ( <b>as per Pg.69 of the complaint</b> )
15.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 29.12.2012	<b>29.06.2016</b> (Note - 36 months plus 180 days grace period from the date of execution of agreement)
16.	Date of offer of possession letter	17.10.2018 ( <b>Annex C4</b> )
17.	Delay in handing over possession	2 years, 4 months (approx.)

3. As per clause 3.1 of the agreement, the respondents had agreed to handover the possession of the subject flat to the complainant within 36 months from the date of its execution

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with the additional grace period of 180 days after the expiry of the said 36 months for obtaining the occupation certificate.

4. It is stated that vide letter dated 17.10.2018 i.e. after a delay of approximately 2 years from the committed date of possession, the respondents offered the possession of the subject flat along with the statement of accounts cum invoice and in the offer of possession letter dated 17.10.2018 super area of the flat was found to be unilaterally increased by the respondent from 1470 sq. ft. to 1521 sq. ft. without corresponding increase in the carpet area and without the consent and knowledge of the complainant which is in violation of section 14 (2)(i) of the Real Estate (Regulation and Development) Act, 2016 (in short 'The Act') and accordingly the agreed cost at the time of allotment had been increased under various heads based on the said increased super area; that the complainant had been making timely payment of the instalments against the demands raised by the respondents from time to time, making a total payment of Rs. 68,58,578/- which constitutes to approximately 95% of the total sales consideration in respect of the subject flat. According to the complainant, the respondents had





arbitrarily burdened the complainant under the head "cost escalation" in the sum of Rs. 5,45,628.33 that too for its own default in offering the possession with the delay of approximately two years, further adding the brunt that a meagre compensation of only Rs. 2,02,200 was offered by the respondents for the delay caused by it in offering possession.

It is submitted that since the respondent charges @ 18% p.a. interest in case of any delay in making payment of instalment, the complainant is also entitled to the same rate of interest @ 18% p.a. on the deposited amount for the delay in handing over possession of the subject flat by the respondents and compensation for causing losses as provided under section 18(3) of the Act.

5. According to the complainant, the aforesaid act of the respondent apart from being unjust, unfair, arbitrary, unreasonable, abuse of the dominant position in the industry constitutes the unfair trade practice. Hence, this complaint.
6. The following issues have been raised to be decided by the authority: -

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- 1) Whether the respondent- promoter has offered the possession of flat with delay and in violation of the terms and conditions of the agreement for Sale?
- 2) Whether the complainant is entitled to interest on the deposited amount for the period of delay in offer of possession? If yes, at what rate of interest, complainant is entitled under the facts and circumstances of the present case?
- 3) Whether the increase in super area of the flat by the promoter without corresponding increase in the covered area and without any change in the sanctioned layout plan and without the knowledge and consent of the complainant is not arbitrary, illegal and unjustified? If yes, whether the demand for additional charges corresponding to alleged increase in the super area is not liable to be struck down, in the present facts and circumstances?
- 4) Whether the demand for cost escalation, while the delay is at the end of respondent, is not justified, arbitrary and unfair trade practice?

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5) Whether the respondent-promoter is liable to pay compensation to the complainant, as provided under the Act for failure to perform its duties and obligations undertaken under the agreement for sale?

7. The reliefs sought are detailed as under: -

i. To handover the possession of the flat alongwith delay penalty and interest @ 18% p.a. on the deposited amount of Rs. 68,58,578/- from the due date of possession i.e. w.e.f. 30.06.2016 till the actual handover of possession of the flat in habitable condition with all amenities and facilities, as specified under the agreement for sale; OR

In alternative to refund the amount deposited in the sum of Rs. 68,58,578/- along with interest @ 18% p.a. from the date of each deposit till the date of actual payments;

ii. To struck down the additional demands raised under various heads on the basis of alleged increased super area of the flat and under the head cost escalation and

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- to issue corrected demand cum offer of possession letter and the statement of accounts, accordingly;
- iii. To pay Rs. 10,00,000/- as compensation to the complainant for causing mental agony and harassment;
  - iv. To pay Rs. 25,000/- per month from the committed date of possession till the handing over of possession on account of loss of rental income which complainant would have earned if the flat has been handed over by the committed period.
  - v. To pay Rs. 1,00,000/- as litigation expenses.
8. Notice of the complaint has been issued to the respondents thrice and the delivery reports have been placed in the file. No reply has been filed on behalf of respondents. Case is proceeded as if it is ex-parte. Arguments heard.

**Issue wise findings of the authority: -**

9. **Issue no. 1:** -As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the flat buyer's agreement (copy annexure C2), there is every reason to believe that vide the

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flat buyer agreement dated 29.12.2012 the respondent had agreed to handover the possession of the subject flat to the complainant within a period of 36 months with a grace period of 180 days from the date of execution of agreement which, in other words, means that the respondents were bound to offer the physical possession of the subject flat to the complainant on or before 29.06.2016. However, the offer of possession letter has been placed on the file which clearly proves that the offer of possession of the subject flat was offered to the complainant on 17.10.2018 which further clearly shows that the respondents have caused delay of about 2 years and four months in offering possession of the subject flat to the complainant. It is held that there was a delay of about 2 years and 4 months in offering the possession of the subject flat to the complainant and this was in violation of the terms and conditions of the agreement for sale and also violation of section 11(4)(a) of the Act. Since on the date of coming into force of the Act, the project was not complete and thus it was an "ongoing" project ~~complete~~ and thus covered under the provisions of the Act and the rules framed thereunder.

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10. **Issue no. 3:** -From a perusal of clause 2.1 of the agreement for sale, there is evidence on the record to show that the respondent had allotted an approximate super area of 1,470 sq. ft (136.566 sq. mtrs.) and the areas *were tentative and were subject to change till the grant of the occupation certificate by the authority*. Therefore, by virtue of clause 2.1, the complainant had herself been made to understand and she had agreed that what had been offered to her was only a tentative area which was subject to change till the grant of occupation certificate by the authority (as per the tentative layout plan of the flat as annexure B and specification as per annexure C attached with the agreement).

11. *Clause 2.4 (i) of the Sale agreement inter alia provides that in case there is variation of more than + 15% in the agreed super area as contained in clause 2.1 and the purchaser is unwilling to accept the changed super area by way of refusal to pay the enhanced sales consideration or by accepting the refund for the changed super area, then the allotment be treated as terminated and the payment as received as against the total sale consideration of the flat shall be refunded with interest @ 6% p.a. except for the non-refundable amount. In the present*





case, the variation in the super area offered by the respondents to the complainant vide offer of possession letter dated 17.10.2018 does not come to be more than 15%. It is also less than 5% of the tentative allotted super area. As stated hereinabove what had been offered to the complainant vide agreement for sale dated 29.12.2012 (prior to the coming into force of the Act) was only tentative area and not the confirmed area. It is correct that section 14(2)(i) of the Act casts upon a legal duty on the respondents- promoters not to make any additions and alterations in the sanctioned plan, layout plans and specifications in respect of the apartments without the previous consent of the allottee". However as stated hereinabove, the said provisions of section 14(2)(i) of the Act came into force with the coming into force of the Act. Above all, this is not the case of the complainant that she is not ready to accept the increased super area. Therefore, in the considered opinion of this authority, the complainant is not entitled to raise this grievance before this authority at this stage. Therefore, it is held that the demand for additional charges due to the increase in the super area without corresponding increase in the carpet area is perfectly justified.



12. **Issue no. 2 and 4:** -As is discussed in issue no. 3, the demand for additional charges due to the increase in super area without corresponding increase in the carpet area has been justified. Therefore, the demand for additional charges cannot be struck down and is also not unjustified nor is an act of unfair trade practice.

13. However, in the opinion of this authority the complainant is entitled to interest on delayed offer of possession. Accordingly, it is held that the complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.65% per annum (Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017).

14. **Issue no. 5:** - Suffice is to say that the award of payment of compensation is outside the jurisdiction of the authority and the complainant is at liberty to file an application before the adjudicating officer under section 71 of the Act alongwith the enabling section.

**Findings of the authority: -**

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

**Decision and directions of the authority:-**

16. The authority exercising its power under section 37 of the Act hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.60% per annum with effect from the committed date of delivery of possession i.e. 30.06.2016 till 17.10.2018 within 90days of order.
17. The complaint stands disposed of accordingly.
18. The case file be consigned to the registry.

N.K.Goel

(Former Additional District and Sessions Judge)

Registrar-cum-Administrative Officer(Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

(Authorised by resolution no.

*HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup>*

*July 2019*

Dated:06.08.2019

Judgement uploaded on 08.08.2019