

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

Complaint no. : 3374 of 2020  
Date of filing complaint : 22.10.2020  
Date of decision : 30.09.2022

Mr. Ramji Gupta S/O Sh. Adesh Kumar Gupta <b>R/O:</b> - C-906, Keerthi Royal Palm Apartments , Luvkush Nagar, Electronic City, Bangalore, 560100, KA.	<b>Complainant</b>
Versus	
1. M/s BPTP Private Limited <b>Regd. Office at:</b> - M-11, Middle Circle, Connaught Circus, new Delhi-110001. 2. M/s Countrywide Promoters Pvt. Ltd. <b>Regd. Office At:</b> 28, ECE House, 1 <sup>st</sup> floor, K.G. Marg, New Delhi-110001	<b>Respondents</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Priyanka Aggarwal	Advocate for the complainant
Sh. Venkat Rao	Advocate for the respondents

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	'Spacio', Sector 37-D, Gurugram, Haryana.
2.	Unit no.	L-606, 6 <sup>th</sup> floor, Tower-L (annexure P-3 on page no. 42 of complaint)
3.	Unit area	1225 sq. ft. (annexure P-3 on page no. 42 of complaint)



4.	Revised unit area (as per offer of possession)	1079 sq. ft. (annexure 5 on page no. 49 of reply)
5.	Date of booking	18.06.2010  (vide application for allotment on page no. 33 of complaint)
6.	Date of execution of flat buyer's agreement	15.02.2011  (annexure P-3 on page no. 36 of complaint)
7.	Possession clause	"3. Possession 3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/confirming party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. As prescribed by the Seller/Confirming Party, whether under this Agreement



		<p>or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority.</p> <p>(Emphasis supplied).</p>
8.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement	18.06.2013 (Grace period is not allowed)
9.	Total sale consideration	Rs 39,27,692.00/- (annexure 5 on page no. 49 of reply)
10.	Total amount paid by the complainant	Rs 33,21,229.81/- (annexure 5 on page no. 49 of reply)

12.	Occupation certificate	30.07.2020
13.	Offer of possession	23.11.2020 (page no. 33 of reply)
14.	Grace period utilization	<p>In the present case, the promoters are seeking a grace period of 180 days for applying and obtaining of occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 30.07.2020 it is implied that the promoters applied for occupation certificate only on 21.01.2020 which is later than 180 days from the due date of possession i.e., 18.06.2013. The clause clearly implies that the grace period is asked for applying and obtaining the occupation certificate, therefore as the promoters applied for the occupation certificate much later than the statutory period of 180 days, they do not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 18.06.2013.</p>

**B. Facts of the complaint**

3. That the complainant was allotted unit No. L-606, 06th Floor, Tower-L, 3 BHK admeasuring 1225 Sqft in BPTP Spacio Sector-37 D, Gurugram, dated 26.10.2010.
4. That the respondents to dupe the complainant in their nefarious net even executed buyer's agreement signed between the parties on 15.02.2011, just to create a false belief that the project would be completed in time bound manner. In the garb of that agreement, they persistently raised demands due to which were able to extract huge amount of money from the complainant.
5. That the total cost of the said flat is Rs. 3525200/- and sum of Rs. 3541875/- was paid by the complainant (more than 95% of Total Sale consideration) in a time bound manner.
6. That it is pertinent mention here that the complainant paid a sum of Rs 3541875/- to the respondents till date and only last instalment remained as per the payment schedule (more than 95% of total sale consideration was paid by complainant) and paid amount as demanded by the respondents without doing appropriate work on the said project. Thus, after extracting 95% amount the demands raised were illegal and arbitrary.
7. That respondents were liable to hand over the possession of a said unit before 18.06.2013 but builder offered the possession on 21.08.2020 and the same was not in a habitable condition.
8. That complainant has paid all the instalments timely and deposited Rs. 3541875/- with the respondents but in an endeavour to extract

money from allottee, they devised a payment plan under which linked more than 15% amount of total paid against as an advance (80 % amount linked with the construction of super structure only) of the total sale consideration to the time lines and which was not depended or co-related to the finishing of flat and internal development of facilities amenities. After taking the same, respondents have not bothered for any development.

9. That respondents' executed FBA one sided at the time offer of possession builder used new trick for extracted extra money from complainant forcibly and imposed escalation cost of Rs 634452/- and wrongly justified it.
10. That the respondents have indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainant and his family has been rudely and cruelly dashed the savoured dreams, hopes and expectations to the ground. The complainant is eminently justified in seeking possession of flat along with delayed penalty.
11. That the complainant wrote the email on dated 15.12.2010 to the respondents regarding unit number, unit size, PLC and reply received from them dated 16.12.2010 that as "Your allotment has been done for 3BHK in 1225 Sq.ft.
12. That the respondents at the time of offer of possession forcibly imposed escalation cost Rs. 634452/- and decreased the super area & unit size of the flat 1225 sqft (3 BHK) to 1079 sq ft (2 BHK), which

has been objected by the complainant at the time of offer of possession.

13. That the respondents had illegal and unjustified demand towards VAT of Rs 26305/-, an intimidation attempt to coerce and obtain an illegal and unfounded claim amount and also demanded 1 year advance maintenance charges amount payable as per the Haryana Apartment Owners Act and the charges are to be paid monthly. Hence asking for the maintenance charges in advance for 12 months, without having given the possession and without the registration of the flat is absolutely illegal.
14. That respondents charges IFMS (Interest free maintenance security), i.e. security deposit and builder would get interest on amount but not passing the same to the complainant being illegal, arbitrary and unilateral. Hence, this complaint seeking possession of the allotted unit besides delay possession charges and quashing illegal and unfounded charges raised against that unit.

**C. Relief sought by the complainant:**

The complainant has sought the following relief:

- i) Pass an order for delay interest on paid amount of Rs. 3541875/- from the due date along with pendent lite and future interest till actual possession thereon @ 18 % p.a.
- ii) Direct the respondents to quash the escalation cost of Rs. 634452/-.
- iii) Direct the respondents to quash the one-year advance maintenance charges of Rs. 45835.92/-.



- iv) Direct the respondents to give the possession of allotted unit no.L-606, 06 Floor, Tower-L, 3 BHK with super area 1225 Sq. ft in habitable condition with all amenities mentioned in brochure.
- v) Direct the respondents to quash the VAT Charges and will pay by own.
- vi) Direct the respondents to pay interest on maintenance security.
- vii) pass an order for payment of GST amount levied upon the complainant and to take the benefit of input credit by builder.

**D. Reply by the respondents**

The respondents by way of written reply made the following submissions.

15. That the present complaint liable to be dismissed as the same is barred by the provisions of Order 2 Rule 2 of Code of Civil Procedure, 1908. It is a settled law that where a claimant omits to sue in respect of any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. It is further submitted that the provisions of Order 2 Rule 2 indicate that if a person is entitled to several reliefs against the other party in respect of the same cause of action, he cannot split up the claim so as to omit one part of the claim and sue for the other. It is submitted that if the cause of action is the same, the claimant has to place all his claims

before the court in one suit, as Order 2 Rule 2 is based on the cardinal principle that a person should not be vexed twice for the same cause. One of the objects of Order 2 Rule 2 is also to avoid multiplicity of litigation. Thus, the complainant herein could have raised the additional prayer with regard to quashing of advance maintenance charges before the Hon'ble National Commission wherein a consent order has been passed by the said commission on 22.10.2020.

16. It is submitted that in the garb of seeking certain additional reliefs from this Hon'ble Authority, the complainant is seeking not only reopen and reagitate the merits of a settled case but is also trying to skirt the binding principle of res judicata which squarely applies to the present case inter se the parties. It is the humble submission of the respondents that the additional relief so claimed by the complainant are squarely covered by the principle of constructive res judicata as being a relief in the nature of a consequential relief to the consent order dated 22.10.2020. The constructive res judicata as engrafted under explanation IV to Section 11 of the CPC provides that if a plea could have been taken by a party in a proceeding by him and his opponent, he should not be permitted to take that plea against the same party in a subsequent proceedings with reference to the same subject matter.
17. Thus, the relief sought by the complainant in the present complaint was directly and substantially in issue before the Hon'ble National Commission in the Consumer Complaint 1815/2016 and the same

has already been heard and decided by the Hon'ble National Commission vide consent order dated 22.10.2020. Hence, the present complaint is liable to be dismissed on this sole ground alone.

- 18.** It is submitted that the respondents on 30.07.2020 post receipt of occupation certificate offered possession to the complainant vide letter dated 21.08.2020. It is further submitted that the complainant failed to clear the outstanding dues as per the offer of possession. It is submitted that the nomenclature for tower L in the official records of appropriate authorities is tower 9.
- 19.** It is further submitted that as per the consent order dated 22.10.2020, the respondents adjusted the compensation awarded by NCLT in its revised offer of possession letter dated 23.11.2020.
- 20.** It is pertinent to mention herein that due to an inadvertent oversight, an error had crept in the offer of possession letter dated 23.11.2020; hence the respondents sent a corrigendum dated 18.12.2020 in total compliance of the consent order dated 22.10.2020. It is further pertinent to point out that the respondents have already adjusted Rs. 1,186,384.81/- towards compensation awarded by the Hon'ble National Commission vide the consent order. It is submitted that the amount towards stamp duty is still payable by the complainant.
- 21.** All other averments made in the complaint were denied in toto.
- 22.** Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint

can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

23. The respondents have 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**

24. 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**

25. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.*

**Section 34-Functions of the Authority:**

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 complainant at a later stage.

**E. Findings on the relief sought by the complainant.**

- i) Pass an order for delay interest on paid amount of Rs. 3541875/- from the due date along with pendent lite and future interest till actual possession thereon @ 18 % p.a.
- ii) Direct the respondents to quash the escalation cost of Rs. 634452/-.
- iii) Direct the respondents to quash the one-year advance maintenance charges of Rs. 45835.92/-.
- iv) Direct the respondents to give the possession of allotted unit no.L-606, 06 Floor, Tower-L, 3 BHK with super area 1225 Sq. ft in habitable condition with all amenities mentioned in brochure.
- v) Direct the respondents to quash the VAT Charges and will pay by own.
- vi) Direct the respondents to pay interest on maintenance security.

- vii) pass an order for payment of GST amount levied upon the complainant and to take the benefit of input credit by builder.

26. Some of the admitted facts of the case are that a project by the name of Spacio situated in sector 37-D , Gurugram was being developed by the respondents . The complainants coming to know about the same booked a unit in it on 18.06.2010 against total sale consideration of Rs. 3927692/- . A buyers agreement in this regard was executed between the parties on 15.02.2011 . The complainat started paying the amount gainst the allotted unit and paid a sum of RS. 3321229/- in all. The due date for completion of the project and offer of possession of the allotted unit was agreed upon between the parties as 18.06.2013. But the respondents were unable to complete the project and obtain an occupation certificate. However, the same was obtained on 30.07.2020 leading to offer of possession of the allotted unit besides raising demand for the due amount. It is not disputed that flat allottees welfare association has also approached NCDRC New Delhi for the same cause of action by way of complaint bearing no. 1815/2016 and the same was disposed off vide orders dated 22.10.2020. It is also a fact that order dated 22.10.2020 was passed by NCDRC on the basis of consent given by the parties to the litigation in that complaint. Thus, when the matter in dispute has already been settled between the parties by the competent forum, then the present complaint seeking relief for the same cause of

action is not maintainable and is barred by the principle of Res judicata as per the provision of section 11 of Code of Civil Procedure and which provides that when a matter has been decided between the parties by a competent court of jurisdiction then no second claim for the same cause of action is maintainable. The complainant has not disputed the factual position and issues involved in the case in hand. So, keeping in view all these facts, the complaint filed is not maintainable being barred by resjudicata. Hence, no findings on the issues detailed above are being returned.

**F. Directions of the Authority:**

27. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking certain reliefs against the respondents is not maintainable and the same is hereby order to be rejected.
28. Complaint stands disposed of.
29. File be consigned to the Registry.

  
Sanjeev Kumar  
Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
**Dated: 30.09.2022**