

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

Complaint no. : 3023 of 2021
Date of filing complaint : 11.08.2021
Date of decision : 26.05.2023

	Rhea Arora R/O: - H.No.848, Sector-4, Urban Estate, Gurugram, Haryana.	Complainant
Versus		
1 2	M/s BPTP Limited M/s Countrywide Promoters Private Limited Regd. Office at: - M-11, Middle Circle, Connaught Circus, New Delhi-110001.	Respondents

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Daggar Malhotra	Advocate for the complainant
Sh. Harshit Batra	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 allottees 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	Mansions Park Prime, Sector 66, Gurugram, Haryana.
2.	Unit no.	MA1-203, 2 nd floor, tower-MA1 (annexure R-14 on page no. 136 of reply)
3.	Unit admeasuring	2764 sq. ft. (annexure R-3 on page no. 72 of reply)
4.	Revised unit area	3044 sq. ft. (annexure R-14 on page no. 136 of reply)
5.	Date of booking	20.07.2010 (vide payment receipt annexed on page no. 62 of reply)
6.	Date of execution of flat buyer's agreement	16.09.2010 (annexure R-3 on page no. 68 of reply)



7.	Possession clause	<p>3.1. POSSESSION</p> <p>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 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 days, after expiry of 36 months, for applying and</p>
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		obtaining the Occupation Certificate in respect of the Colony from the Authority....." (Emphasis supplied).
8.	Due date of delivery of possession	20.07.2013 Note: Grace period is not allowed
9.	Total sale consideration	Rs. 1,67,68,931.08/- (annexure R-14 on page no. 139 of reply)
10.	Total amount paid by the complainant	Rs. 1,18,87,959.08/- (annexure R-14 on page no. 139 of reply)
11.	Occupation certificate	14.02.2020 (annexure R-13 on page no. 133 of reply)
12.	Offer of possession	05.03.2020 (annexure R-14 on page no. 136 of reply)
13.	Grace period	In the present case, the promoter is seeking a grace period of 180 days for applying and obtaining the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 14.02.2020 it is implied that the promoter applied for occupation certificate on 17.05.2017 which is later than 180 days from the due

		<p>date of possession i.e., 20.07.2013. The clause clearly implies that the grace period is asked for applying and obtaining occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days, he does 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 20.07.2013.</p>
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B. Facts of the complaint

3. That the Complainant and the respondent entered into flat buyer's agreement dated 16.09.2010 in regard to one unit- Flat No. MA1-203, unit 3, Mansion Tower M, approx. super area 2764 sq ft at Mansions, Park Prime at Sector 66, Gurugram, Haryana. The basic sale consideration of which was Rs.1,05,03,200/-. That the complainant has already paid an amount of Rs. 1.18,87,925/-till date. That as per the flat buyer's agreement, the Possession of the Allotted Flat was stated to be given within 36 months Le. 3 years along with a grace period of 180 days after expiry of 36 months.
4. That vide letter dated 05.03.2020, i.e after the expiry of more than 6 years from the due date of possession the builder has finally offered possession but with addition of undue and unlawful charges and therefore, the complainants have been compelled to the present complaints before this Hon'ble Authority. The unlawful charges are as

follows: GST of Rs.539090/-, Cost escalation of Rs.1865972/-, Increase in Super area, Taxes, Electrification and STP Charges.

5. That vide letter dated 29.01.2021, the builder has finally offered possession but with addition of undue charges with a total amount payable and the same are enumerated below-:

GST: GST of Rs.5,39,090/-has been demanded: Firstly, the project should have been completed and possession should have been offered within 36 months plus grace period, so had the same been complied with by the Respondent, there would be no levy of GST whatsoever hence the complainant cannot be made to suffer for the delay, inaction and breach of the date of possession on part of the builder. Further, secondly, according to GST rules, the builder will be in a position to claim input credit on the materials and services used and should pass on the benefit of input credit to the flat buyers, hence the builder should not ask the complainant to pay full amount of GST without taking into account the benefits under GST and without passing on that benefit of ITC to the complainant. The builder is liable for punitive actions against him under the anti-profiteering provisions of GST laws. Under GST Regime, the developers get credit of the taxes paid after 1st July, 2017 on the purchase of construction instruments such cement, steel, paints, bathroom fittings from the tax the buyer will pay on the finished unit, therefore developers must pass on to the buyer the credit they receive against the taxes so paid on the purchase of such inputs.

Cost escalation of Rs.1865972/-: As per clause 12.11 escalation fees has been defined to be levied only in an exceptional situation where cost of steel and cement and other construction materials increases beyond 10% therefore meaning that an escalation of 10% has already

been included in and paid by the purchaser in the Basic sale price. Hence this cost of escalation should be removed and only if any actual escalation provable by the respondent is shown the same may be levied. Further, in regard to price index, reference index has been taken as of year 2009. Only customers who booked flats in the pre-launch period were benefitted from the low base rate, but such cost index cannot be applied to the complainant.

Increase in super area: An exponential increase in super area has been mentioned in the demand letter. The same is neither comprehensible nor possible. BPTP should be put to strict proof in order to show the exact documentation proving such increase.

Taxes: That, 2nd Last Paragraph of Clause 2.1 clearly provides that, the sale consideration has been fixed based on the taxes and/or other dues as applicable. If there is a fresh incidence of tax that shall be borne and paid by the purchaser. Various additional taxes under the heads of VAT, Service and GST have been charged by the respondent in each and every demand/bill raised by the respondent right from the date of signing of the BBA from the complainants.

Electrification and STP Charges: Development charges clearly includes in its ambit all electrical works. The same has already been charged separately, hence, another charge for electrical work under a new name of electrification and STP charges is unfair.

C. Relief sought by the complainants:

The complainants have sought the following relief:

- Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.

- Direct the respondent to remove wrongly computed cost of escalation fees.
- Direct the respondents to provide Super Area calculation.
- Direct the respondents to provide the actual cost of STP without markup.
- Withdraw unlawful demands of VAT, GST. Cost escalation

D. Reply by the respondent

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

6. It is submitted that occupation certificate has been granted by The Director Town and Country Planning, Haryana, Chandigarh vide its memo bearing no. 4393 dated 14.02.2020. Thereafter, the respondents issued offer of possession of the unit in question to the complainant on 05.03.2020.
7. Upon completion of construction and upon getting/ securing occupancy certificate from competent authority, respondent issued the offer of possession letter on 05.03.2020 to the complainant along with the list of documents needed for the execution of conveyance deed. After receiving Offer of possession letter, the complainant contacted the respondent for discussions over certain charges and requested for discount. Accordingly, the respondent as a goodwill gesture gave a discount of Rs.28,81,006.81/- on the final demand to settle all their grievances amicably. The complainant post availing the discount, made the payment on 31.07.2020. However, the complainant failed to furnish fixed deposit towards VAT charges and

stamp duty charges. Due to this, the respondent was unable to initiate the process for the execution of conveyance deed. now, the complainant afterthought or over ill advice filed present complaint just to harass the respondent.

8. The complainant has approached this hon'ble authority with unclean hands i.e. by concealing and misrepresenting facts material to the present purported complaint. 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 respondents 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:

- That the complainant has concealed from this hon'ble authority that post issuance of offer of possession on 05.03.2020, the respondents as a goodwill gesture, provided a discount amounting to Rs. 28,81,006.81/- to the complainant to settle the disputes amicably. The Complainant post availing the discount, made the payment on 31.07.2020. however, the complainant failed to furnish fixed deposit towards vat charges and stamp duty charges.
- That the complainant had concealed from this hon'ble authority that with the motive to encourage the complainant to make timely payment within stipulated time, the respondent also gave additional incentive in the form of timely payment discount to the complainant and in fact, till date, amounting to Rs.3,77,617.08/-.
- That the complainant had concealed from this hon'ble authority that, at the time of booking on the complainant's request, the

respondent give basic sale price(BSP) discount amounting to Rs.522,800/- by reducing BSP from Rs.4,000/- per sq. ft. to 3,800/- sq. ft.

From the above, it is very well established, that the Complainant have approached this Hon'ble Authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand by concealing the material fact that respondent give total discount amounting to Rs.37,81,423.16/- from booking till now. It is further submitted, that the sole intention of the complainant is to unjustly enrich themselves at the expense of the respondent by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted, that in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

9. It is submitted that as per clause-2 of the agreement titled as "Sale Consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including edc, idc and eedc), preferential location charge (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (GST), electrification charges (EC), charges for installing sewerage treatment plant (STP), administrative charges, interest free maintenance security (IFMS), etc. shall also be payable by the complainant.
10. It is submitted that vide clause 2.4 of the agreement, duly executed, it was clearly agreed that the super area of the respective flats stated therein was tentative and was subject to change till the handing over of physical possession. The plans on the basis of which the project in

question was launched were tentative, however, the occupation certificate has been received by the company as per the approved drawings and the final area has been computed at the stage of offer of possession and on computation of the area there is an increase in the super area of the flat i.e., the covered area of the flat and prorate share of the common areas.

11. In the year 2016, the fire staircase norms have been changed by the concerned department and accordingly, on 17.07.2018, respondent requested for an effective one-year extension of fire NOC i.e. from the date of NOC and the same was granted by the concerned authorities. Finally, the Respondent received the occupancy certificate for the unit in question on 14.02.2020. Offer of possession has already been offered to the complainants vide offer of possession letter dated 05.03.2020, however the complainants have miserably failed to clear the outstanding dues till date which has delayed the physical handing over of possession with respect to the unit in question.

12. All the averments made in the complaint were denied in toto.

13. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

14. 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

15. 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

16. 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.

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 complainants at a later stage.

E. Findings on the relief sought by the complainants.

- **E.1** Direct the respondent to pay delay possession charges alongwith prescribed rate of interest.

- Direct the respondent to remove wrongly computed cost of escalation fees.
- Direct the respondents to provide Super Area calculation.
- Direct the respondents to provide the actual cost of STP without markup.
- Withdraw unlawful demands of VAT, GST. Cost escalation.

17. The complainant submits that they are seeking possession and delayed possession charges since the unit was due to be delivered in July 2017 and the complainant has already paid a sum of Rs. 1,18,87,959/- (including a sum of Rs. 20 Lakhs which was received by the respondent in lieu of some settlement) against a total sale consideration of Rs. 1,67,68,931/-. The counsel for the complainant draws attention of the authority towards mail of respondent dated 14.08.2020 further demanding sum of Rs.28,81,006/- along with stamp duty of Rs.7,63,000/- and further stated that once the settlement has been done why the demand was raised.

18. The counsel for the respondent draws attention of the authority towards mail dated 04.05.2020 received from the complainant which clearly states that complainant has agreed one-time lumpsum payment of Rs.20 Lakhs towards offer^d possession of the booked unit and henceforth BPTP will not raise any further demand which was acknowledged by the respondent on 31.07.2020 and a revised statement was also sent to the complainant. The respondent further states that a sum of Rs.23,82,630/- was a special credit given to them as per statement of accounts dated 05.08.2021.

19. The counsel for the complainant submits that after the said settlement, an invoice was raised by the respondents on 14.08.2020 where the amount of compensation given was again demanded by the respondents, and they breached the settlement. The counsel for respondents clarified that the letter dated 14.08.2020 was only inadvertently sent to the complainant and the same was rectified by the respondent-builder and a letter was sent via email dated 30.01.2021 which states that the accounts have been scrutinized and it has been observed that there are 0 dues. This evidently shows the bonafide conduct for the settlement between the parties.

20. The authority is of view that when the matter in dispute has already been settled between the parties then the present complaint is not maintainable. Hence, no findings on the issues detailed above are being returned.

F. Directions of the Authority:

21. 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 ordered to be rejected.

22. Complaint stands disposed of.

23. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 26.05.2023