

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

Complaint no. : 3415 of 2019
Date of filing complaint : 09.08.2019
Date of decision : 31.01.2023

1. Siddharh Raikhy 2. Anita Raikhey R/O: - 77-B, Block-Z, Tatvam Villa, Sector-48, Gurgaon.	Complainants
Versus	
1. M/s BPTP Limited 2. Country Wide Promoters Regd. Office at: - M-11, Middle Circle, Connaught Circus, New elhi-110001.	Respondents

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Ms. Aditi Bhatia Proxy Advocate	Advocate for the complainants
Sh. Harshit Batra	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottees 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.	MA1-1604, 16th floor, tower-MA1 (annexure R-3 on page no. 59 of reply)
3.	Unit admeasuring	2764 sq. ft. (annexure R-3 on page no. 59 of reply)
4.	Revised unit area (as per offer of possession)	3605 sq. ft. (annexure R-18 on page no. 150 of reply)
5.	Date of booking	20.07.2010

		(vide payment receipt on page no. 44 of reply)
6.	Date of execution of flat buyer's agreement	16.09.2010 (annexure R-3 on page no. 48 of reply)
7.	Possession clause	<p>"3. POSSESSION</p> <p>"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 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</p>

		of 36 months, for applying and obtaining the Occupation Certificate in respect of the Colony from the Authority....." (Emphasis supplied)
8.	Due date of delivery of possession	20.07.2013
9.	Total sale consideration	Rs 19,612,412.59/- (vide statement of accounts on page no. 153 of reply)
10.	Total amount paid by the complainants	Rs 11,496,749.40/- (vide statement of accounts on page no. 153 of reply)
10.	Occupation certificate	14.02.2020 (annexure A-1 on page no. 5 of additional documents submitted by the respondents in complaint no. 3203 of 2019)
11.	Offer of possession	06.03.2020 (annexure R-18 on page no. 150 of reply)
12.	Grace period utilization	In the present case, the promoters are seeking a grace period of 180 days for applying and obtaining of occupancy certificate in respect of the colony from the authority. As a matter of fact, from the perusal of occupation certificate dated 14.02.2020 it is implied that

the promoters applied for occupation certificate only on 17.05.2017 which is later than 180 days from the due date of possession i.e., 20.07.2013. 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 20.07.2013.

B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainants booked a unit in the project BPTP 'Mansions Park Prime' being developed by the respondents in Sector 66 Gurgaon.
4. That on 23.04.2010, the marketing staff of the respondents allured the complainants with the colourful brochure and proposed specification and assured for timely delivery of flat. They booked one 4 BHK flat admeasuring 2764 sq. ft. bearing flat No. MA1-1604 and paid till date Rs. 1,14,96,749/- under the construction linked plan for a sale consideration of Rs. 1,96,12,412/-

5. That a flat buyer agreement w.r.t the allotted unit was executed between the parties on 16.09.2010 setting out the terms and conditions of allotment, sale consideration, the dimension of the unit, payment plan and other particulars. The due date for the completion of the project and offer of possession of the allotted unit was fixed as 20.07.2013.
6. That the complainant till date paid an amount of Rs. 1,14,96,749/- but after 5 and half year no intimation from the side of the respondents.
7. That in light of the above stated facts and circumstances, the complainants are eligible for payment of interest in terms of section 18 of RERA. The said interest is payable with the offer of possession and ought to have been adjusted with the last demand issued with the offer of possession. The interest is; therefore, payable until the date it is actually paid to the complainants.

C. Relief sought by the complainants:

- (i) Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.
8. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

The respondents have contested the complaint on the following grounds:

9. That the complainants have approached this Hon'ble Authority for redressal of grievances with unclean hands, i.e by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. In this regard, a reference may be made to the following instances which establish concealment /suppression /misrepresentation on the part of the complainant:

- That the complainants have concealed from this Hon'ble Authority that via offer of possession dated 06.03.2020, the respondents had, as a goodwill gesture, provided compensation amounting to Rs. 2,87,122.00/- to them. However, the complainants failed to pay the demand as per the offer of possession. Hence, the respondents were constrained to issue reminder letters dated 02.04.2020, 28.06.2020, 26.06.2020 and 10.08.2020. Even after repeated reminders, the complainants failed to pay the final demand as per the offer of possession.
- That the complainants have concealed from this Hon'ble Authority that with the motive to encourage the complainants to make payment of the dues within the stipulated time, the respondents

also gave additional incentive in the form of timely payment discount to them and in fact, till date, they have availed timely payment discount of Rs. 2,69,882/-. The complainants have concealed from this Hon'ble Authority that the respondents at the stage of booking, offered an inaugural discount on basic sale price (BSP) amounting to Rs. 5,52,800/-. Thus, the net BSP charged from the complainants is less than the original amount of the unit.

- That the complainants have concealed from this Hon'ble Authority that they made default in making timely payments and are still in default of various installments. In this context, it is submitted that as per the agreed payment plan, respondents raised a demand vide letter dated 01.08.2012 of Rs.14,04,984.60/- payable on or before 16.08.2012. The complainants failed to pay the said demand within the stipulated time. Therefore, the respondents were constrained to issue reminder letters dated 21.09.2012 and 29.10.2012 to them. However, they failed to clear the pending dues. The respondents issued a last and final opportunity letter dated 14.12.2012 requesting the complainants to clear the outstanding dues within a period of 15 days from the date of notice, where after the complainants made payment against receipt dated 21.12.2012. As per agreed payment plan, respondents raised VAT demand vide letter dated 05.11.2016. However, the complainants neglected to clear the outstanding dues, thereafter respondents were constrained to send reminder letter dated 27.01.2017 to the

complainants. The complainants made payment, accordingly receipt dated 07.02.2017 was issued by the respondents.

From the above, it is very well established, that the complainants have approached this Hon'ble Authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the complainants is to unjustly enrich themselves at the expense of the respondents 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.

10. In the year 2016, the fire staircase norms have been changed by the concerned department and accordingly, on 17.07.2018, respondents 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 respondents received the occupancy certificate for the unit in question on 14.02.2020 and an offer of possession has already been offered to the complainants vide offer of possession Letter dated 06.03.2020. 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.
11. All other averments made in the complaint were denied in toto.
12. 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

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

F. I Territorial jurisdiction

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 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.

F. II Subject matter jurisdiction

13. 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.

14. 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.

H. Findings on the relief sought by the complainants.

15. Relief sought by the complainants: The complainants have sought following relief(s):
- Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.

Delay Possession Charges

16. The complainants booked one 4 BHK flat admeasuring 2764 sq. ft. bearing flat No. MA1-1604 and paid till date Rs. 1,14,96,749/- under the construction linked plan for a sale consideration of Rs. 1,96,12,412/-. A flat buyer agreement w.r.t the allotted unit was executed between the parties on 16.09.2010. The due date for the completion of the project and offer of possession of the allotted unit was fixed as 20.07.2013.

17. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

18. Clause 3 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 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 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 after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the and Eighty) days, Colony from the Authority. The Seller / Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to the handing over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat. In case, the

Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of the Flat.

19. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
20. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of

possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

21. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking i.e., 20.07.2010. The period of 36 months from the date of booking /registration of flat expired on 20.07.2013. So, the due date for handing over possession of the allotted unit comes to 20.07.2013. Further, regarding allowing grace period of 180 days as provided in the buyer's agreement, no material evidence on record has been placed justifying that during the period of 180 days, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the occupation certificate also, it is observed the promoters obtained occupation certificate only on 14.02.2020 when the period of 36 months had already expired long back. So, the promoters cannot claim the benefit of grace period of 180 days. Thus, the grace period is not allowed, and the due date of possession comes out to be 20.07.2013.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

23. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 31.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60%.
25. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

H. Directions of the authority

27. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondents are directed to pay interest on the paid-up amount at the prescribed rate of 10.60 % p.a. for every month of delay from the due date of possession i.e., 20.07.2013 till the date of offer of possession i.e., 06.03.2020 plus two months i.e., 06.05.2020 to the complainant(s) as per section 19(10) of the Act.
 - ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.

- iii. The complainants are directed to pay outstanding dues after adjustment of delay possession charges and if the amount of compensation due to delay already credited in the account statement of the allottees shall be adjusted towards delay possession charges.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
28. The complaint stand disposed off.
29. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Date: 31.01.2023