

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

**Complaint no.** : 495 of 2021  
**Date of filing complaint** : 17.02.2021  
**Date of decision** : 31.01.2023

Mr. Shyam Nandan Pandey & Mrs. Gauri Pandey <b>Both R/O:</b> - E-24 FF, Astire Gardens, Sector-70, Gurugram, Haryana.	<b>Complainants</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 complainants
Ms. Tanya Proxy Counsel	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 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 complainants, 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	"Astaire Gardens" Sector-70A, Gurugram, Haryana.
2.	Unit no.	E-24-FF (annexure C/1(A) on page no. 78 of complaint)
3.	Unit admeasuring	1090 sq. ft. (annexure C/1(A) on page no. 78 of complaint)
4.	Date of execution of flat buyer's agreement	28.01.2013 (annexure C-2 on page no. 82 of complaint)
5.	Possession clause	Possession Clause- 5.1 Subject to Force Majeure, as defined in Clause 14 and



further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every Instalment of the total sale consideration including DC, Stamp duty and other charges And also subject to the Purchaser(s) having complied with all formalities or documentation as Prescribed by the Seller/Confirming Party, **the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period")**. The purchaser(s) further agrees and understands that the Seller/Confirming party shall additionally be entitled to a period of 180 days ("Grace Period") after the







		expiry of the said commitment Period to allow for filing and pursuing the Occupancy Certificate etc.
6.	Due date of delivery of possession as per clause 5.1 of the flat buyer's agreement.	28.01.2016 (Grace period is not allowed)
7.	Total sale consideration	Rs 89,78,095./- (annexure C/7 on page no. 167 of complaint or SOA in reply)
8.	Total amount paid by the complainants	Rs 88,29,225/- (annexure C/7 on page no. 167 of complaint)
12.	Occupation certificate	19.09.2017 (Page no. 147 of reply)
13.	Offer of possession	28.09.2017 (page no. 148 of reply)
14.	Grace period utilization	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, the occupancy certificate was received on 19.09.2017 which is later than 180 days from the due date of possession i.e., 28.01.2016. 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 28.01.2016.

**B. Facts of the complaint**

3. That the complainants booked a unit in the project 'Astaire Garden' sector -70 A, Gurugram by paying an amount of Rs.2,51,000/- towards the booking of the said unit bearing no. E-24-FF, 1 Floor, in Block-E, having super area measuring 1090 sq. ft. As per demand raised by the respondents, the complainants paid a sum of Rs. 71,55,477/- against the total sale consideration of Rs. 89,78,595/-.
4. That the respondents to dupe the complainants in their nefarious net even executed buyer's agreement signed between the parties on 28.01.2013, 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 complainants.



5. The complainants contacted the respondents on several occasions, but they were never able to give any satisfactory response to them regarding the status of the construction and definite about the delivery of the possession.
6. That the respondents on 28.09.2017 offered possession of the subject unit no. E-24-FF, 1 Floor, in Block-E with demand of Rs 20,32,982.41 wherein a demand was the basic sale price of Rs. 68,50,011.22, EDC and IDC for Rs.2,87,999/- PLC for Rs.3,52,513/-, cost escalation charges Rs. 3,81,674/-, Service Tax Rs. 2,17,619/-, VAT Rs. 71,860/-, power backup installation charges of Rs.1,50,000/-, STP charges of Rs. 1,25,896/-, club membership charges of Rs. 2,00,000/- and GST. Rs. 2,78,410/- were also raised.
7. That the respondents vide final statement of accounts dated 01.09.2020 stated that the complainants had paid a consideration of Rs. 88,29,225/- against a total consideration of Rs. 92,23,225.77. The complainants were offered a miniscule amount of delayed compensation of Rs. 3,23,770/- after the respondents had delayed the project for a period of more than 5 years.
8. That the respondents had illegally charging the complainants a preferential location charge (PLC) of Rs: 3,97,105.20 for. Park facing allotment; however, failed to offer complainants the same allotment as a majority of the park had been taken over by the NHAI. Similarly, the respondents raised a demand for an added PLC for the 24-meter road amounting Rs. 7,51,466/- and failed to offer the 24-meter road.
9. That the complainants had moved the Hon'ble NCRDRC to get possession of the said allotment, at which point the respondent

company cornered them to enter into a settlement per force, threatening to tie up the said allotment in litigation and pushed them into an unfair and arbitrary settlement and made them withdraw the case from the Hon'ble NCRDRC

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

The complainants have sought the following relief:

- i) Direct the respondents to pay delay possession charges along with prescribed rate of interest.
- ii) Direct the respondents to refund the club membership charges.
- iii) Direct the respondents to refund HVAT demand with interest for the deposited amount.
- iv) pass an order for payment of GST amount levied upon the complainants and to take the benefit of input credit by builder.
- v) Direct the respondents to refund the escalation charges.

**D. Reply by the respondents**

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

10. That the complainants have approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects



11. It is submitted that the respondents on completing of construction with regard to the project and upon receipt of occupation certificate dated 19.09.2017 from the concerned departments, has issued offer of possession letter dated 28.09.2017. In terms of the said offer of possession, the complainants were requested to complete documentary formalities/ pay all previous dues. The complainants on adequate examination and analysis of the contents of the offer of possession letter dated 28.09.2017 and, being satisfied on account of investigation conducted with regard to allotted unit and, all other related aspects, and without hesitation have accepted physical possession of the allotted unit on 22.01.2018.
12. The respondents being a customer centric organization and as a goodwill gesture provided a special credit compensation amounting to Rs. 149,370/- apart from the compensation of Rs. 174,400.00/- already offered to the complainants at the time of offering possession. A settlement has already been arrived at prior to filing of the said complaint. However, the complainants erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority to gain at the expense of the respondents, even though settlement has already been arrived at between the parties.
13. That the complainants were part to the class action suit Astaire Garden Owners Association & 72 Ors Vs. BPTP Ltd. (CC No.406/2016 & IA No.16781) which was dismissed as withdrawn vide order dated 24.02.2020. The complainants were also given a time period of 30 days to revive the complaint if any formality was not completed by the respondents. However, the complainants did not revive the



complaint, but instead approached this Hon'ble Authority only because the present complaint is an afterthought to harass the respondents by abusing the legal process.

14. All other averments made in the complaint were denied in toto.
15. 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.

**APPLICATION CHALLENGING THE MAINTAINABILITY OF THE COMPLAINT ON BEHALF OF THE RESPONDENTS**

16. It is evident from the above that after the filing of the complaint before NCDRC in regard to the same unit, all the grievances of the complainants were settled. It is a matter of record that the complainants enjoyed a complete monetary benefit of Rs.3,23,770 (*as is evident from the SOA annexed herewith as Annexure 4*). After the settlement between the parties, the complainants filed an application to unconditionally withdraw their claim from the Hon'ble NCDRC with respect to all this grievances and claims and that no issue survived after the said settlement. The relevant paras of the application filed by the complainants are reiterated hereunder:

*....have already settled all grievances, issues, disputes, claims, etc. with the opposite party to their satisfaction and thus does not wish to pursue the present Complaint against the opposite Party on their on behalf and now on their own*

*free will, consent and without any undue influence hereby wish to withdraw all their claims, issues, disputes, grievances, whatsoever raised against the opposite Party in respect to Booking/Registration/Allotment of Unit No. E-24-FF, Astaire Garden, Gurgaon, unconditionally and in complete satisfaction of all their claims.*

*That in view of the above, no issue, dispute or claim against the Opposite Party whatsoever, survives in respect of the above.... "*

17. That on the basis of the same, the Hon'ble NCDRC recorded the settlement between the parties in its order dated 24.02.2020 and categorically reserved the right of any complainants to revive the matter before the NCDRC only. Thus in such a circumstance, the present claim cannot be entertained.
18. After categorically settling the matter and withdrawing the claim, no cause of action persists in favour of the complainants. Moreover, if the complainants had any grievance whatsoever, a specific leave was granted by the NCDRC for revival of the complaint. However, instead of taking recourse to the same and in complete breach of the same and with the intent to harass the respondents, after having categorically noted that no issue or grievance remained, the complainants filed the present complaint. The malafide conduct of the complainants is also evident from the fact that they did not disclose of the any of the above facts before this Ld. Authority.
19. The essence of a valid contract as per the Indian Contracts Act, 1872, is offer, acceptance, and consideration. The offer of the respondents for discount was unequivocally accepted by the respondents. The essence of a valid contract having been met and the fact that the Parties had consensus ad idem in regard to the fact that no further



claim can be raised in respect of the agreement and the Act, the present claim cannot be raised, under any manner whatsoever and hence, the present claim is bound to be dismissed.

**E. Jurisdiction of the authority**

20. 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**

21. 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**

22. 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 complainants at a later stage.

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

- i) Direct the respondents to pay delay possession charges along with prescribed rate of interest.
- ii) Direct the respondents to refund the club membership charges.
- iii) Direct the respondents to refund HVAT demand with interest for the deposited amount.
- iv) pass an order for payment of GST amount levied upon the complainants and to take the benefit of input credit by builder.
- v) Direct the respondents to refund the escalation charges.

23. Some of the admitted facts of the case are that a project by the name of 'Astaire Garden' situated in sector 70-A, Gurugram was being developed by the respondents . The complainants coming to know about the same, booked a unit in in the year 2011 against total sale consideration of Rs. Rs 89,78,095/-. A buyer's agreement in this regard was executed between the parties on 28.01.2013. The



complainants started paying the amount against the allotted unit and paid a sum of Rs. Rs 88,29,225/- 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 28.01.2013. But the respondents were unable to complete the project and obtain an occupation certificate. However, the same was obtained on 19.09.2019 leading to offer of possession of the allotted unit besides raising demand for the due amount. It is not disputed that the complainants were a party to the Astaire Garden Owners Association who also approached NCDRC New Delhi for the same cause of action by way of complaint bearing no. 406/2016. The complainants filed a withdrawal application before the Hon'ble NCDRC wherein they categorically stated that they have already settled all grievances , issues, disputes, claims etc with the respondents. 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 complainants have 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:**

24. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainants against the respondents is not maintainable and the same is hereby ordered to be rejected.
25. Complaint stands disposed of.
26. File be consigned to the Registry.

  
Sanjeev Kumar Arora  
Member

  
Ashok Sangwan  
Member

  
Vijay Kumar Goyal  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 31.01.2023

HARERA  
GURUGRAM