



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

**Complaint no. : 523 of 2019**  
**Date of First hearing: 13.08.2019**  
**Date of decision : 03.09.2019**

Mr. Amit Arora

R/o. 97C, DDA Janta Flats, Rampura,

New Delhi-110035

**Complainant**

**Versus**

M/s BPTP Ltd.,

Office at: M-11, Middle Circle, Connaught

Circus, New Delhi - 110001.

**Respondent**

**CORAM:**

**N. K. Goel**

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,

GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July 2019)

under section 81 of the Real Estate (Regulation and  
Development) Act, 2016.

**APPEARANCE:**

Shri Kuldeep Kohli, Adv. Alongwith

Ms. Priyanka Agarwal

Representative of the complainant

Ms. Meena Hooda

Advocate for the respondent.

**EXPARTE ORDER**

1. The present complaint filed on 06.02.2019 relates to a flat buyer's agreement dated 04.12.2012 executed between the complainant and the respondent promoter, registered with this Authority vide registration no. 7 of 2018 dated 03.01.2018, in respect of flat measuring 1760 sq. ft. super area bearing no. T1- 1401, 14<sup>th</sup> floor, Tower T 1 of the project, namely "Park Generations" situated in Sector 37 D, Gurugram (in short, the subject flat) for a basic sale price of Rs. 62,74,400/- and other charges totalling to Rs.76,27,676/- 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 Generation", Sector 37D, Gurugram.
2.	DTCP license no.	83 of 2008 and additional license no. 94 of 2011.
3.	Nature of real estate project	Group housing
4.	Flat/unit no.	T1-1401, 14 <sup>th</sup> floor in tower T1.
5.	Measuring area of the allotted flat	1760 sq. ft.
6.	Final area of flat	1897 sq. ft <b>(as per Page 21 of complaint)</b>
7.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.



8.	Date of completion as per RERA registration certificate.	30.04.2018 (Tower T-76, 17 & 19 ) and 30.11.2018 (Tower T-14, 15 &18)
9.	Date of allotment letter	17.12.2012 <b>(As alleged by complainant)</b>
10.	Date of execution of flat buyer agreement	04.12.2012 <b>(Annexure P3)</b>
11.	Payment Plan	Construction linked payment plan <b>(Pg.69 of the complaint)</b>
12.	Basic sale price of the allotted unit	Rs. 62,74,400/- <b>(Pg. 46 of the complaint)</b>
13.	Basic sale price as per offer of possession	Rs. 65,11,829/- <b>(Pg.21 of the complaint)</b>
14.	Total consideration	Rs. 76,27,676/- <b>(Pg.3 of the complaint)</b>
15.	Total consideration as per offer of possession	92,42,641.25/- <b>(Pg.21 of the complaint)</b>
16.	Total amount paid by the complainant till date	Rs. 76,00,557.82 <b>(as per Pg.21 of the complaint)</b>
17.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 04.12.2012	<b>04.06.2016</b> (Note - 36 months plus 180 days grace period from the date of execution of agreement)
18.	Date of offer of possession letter	17.10.2018 <b>(Page 18 of complaint)</b>
19.	Delay in handing over possession	2 years and 4 months

3. As per clause 3.1 of the agreement, the respondent had agreed to handover the possession of the subject flat to the



complainant within 36 months from the date of its execution with the additional grace period of 180 days after the expiry of the said 36 months for obtaining the occupation certificate. However, according to the complainant various terms of the flat buyer's agreement were absolutely one sided, unfair, arbitrary and highly unreasonable and abuse of dominant position of the respondent.

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 respondent 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 1760 sq. ft. to 1897 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

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demands raised by the respondent from time to time, making a total payment of Rs. 76,00,557.82 which constitutes to approximately 95% of the total sales consideration in respect of the subject flat. According to the complainant, the respondent had arbitrarily burdened the complainant under the head "cost escalation" in the sum of Rs. 6,80,510/- that too for its own default in offering the possession with the delay of approximately two years. 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 respondent and compensation for causing losses as provided under section 18(3) of the Act.

5. It is stated that the respondent demanded Rs. 80,585/- towards advance maintenance charges for the period 15.02.2019 to 14.02.2020 which is illegal and against the provision of the Haryana Apartment Ownership Act, 1983.
6. 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

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constitutes the unfair trade practice. Issues regarding demand of GST/escalation charges have also been raised. Hence, this complaint.

7. The following issues have been raised to be decided by the Authority: -

1. Whether the respondent has breached the provision of the Act as well as the agreement by not completing the construction of the unit in time bound manner?
2. Whether the respondent has unjustly enriched them by misusing the hard earned money the complainant for almost 7 years without paying any interest or penalty for the delay in delivery of the said unit?
3. Whether the respondent is liable to pay interest on the amount paid to them by the complainant at the same rate 18% which they charged from the complainants in case of delayed payment by the complainant?
4. Whether the respondent is liable to pass the input credit to complainant which was the additional burden of GST imposed on the complainants due to inordinate delay in handing over of the possession.

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5. Whether the respondent at the time of possession imposed escalation cost, increased super area without increasing carpet area is unjustified, unacceptable illegal and unilateral?
6. Whether flat buyer agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practise used by builder guise of a biased, arbitrary and one sided drafting of FBA with a malicious and fraudulent intention?
7. Whether the respondent demanded advance maintenance charges from 15.02.2019 to 14.02.2020 unjustified, unacceptable illegal and unilateral?
8. Whether the respondent demanded HVAT charges from complainants unjustified, unacceptable illegal and unilateral?
9. Whether the respondent collected the more than 95% amount from complainants but not made expenses on particular project so project is delayed?

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10. Whether it is justified that the respondent has passed more than 7 years in development of project and still project is incomplete?

11. Whether the respondent- promoter has offered the possession of flat after long delay and without amenities and flat still not in habitable condition is illegal and arbitrary?

8. The reliefs sought are detailed as under: -

1. To direct the respondent to pay monthly interest on the amount collected till date with immediate effect.
2. Direct the respondent to immediately hand over the possession of unit in habitable condition with all amenities mentioned in brochure.
3. To restrain the respondent from raising any fresh demand and increasing the liability of the complainant.
4. Pass an order for delay interest on paid amount of Rs.76,00,558/- from December 2015 along with pendente lite and future interest till actual possession thereon @18%.

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5. To direct the respondent to quash the escalation cost.
6. To direct the respondent to quash the increased in super area of flat as carpet area remain same as previous.
7. To direct the respondent to quash the VAT charges and will pay by own.
8. To direct the respondent to quash the demand of advance maintenance as of now.
9. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
9. Notice of the complaint has been issued to the respondent through speed post as well as on the email address provided to the Authority. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint within the stipulated period. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.
10. Reply filed by the respondent thereafter has been taken on record subject to all just exceptions. In view of the judgement



reported as AIR 1964 SC 993, the reply cannot be considered.

Arguments are heard.

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

9. **All issues:** -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 P/4), there is every reason to believe that vide the flat buyer agreement dated 04.12.2012 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 which, in other words, means that the respondent was bound to offer the physical possession of the subject flat to the complainant on or before 04.06.2016. 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 respondent has caused delay of about 2 years 4 months in offering possession of the subject flat to the complainant. Hence, in the considered finding of this Authority, it is held that there was a delay of about 2 years in



offering the possession of the subject flat to the complainant and this was in violation of the terms and conditions of the flat buyer's agreement and also violation of section 11(4)(a) of the Act.

10. 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 10.45% per annum as provided under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

11. From a perusal of clause 2.1 of the flat buyer's agreement, there is evidence on the record to show that the respondent had allotted an approximate super area of 1,760 sq. ft 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 himself been made to understand and had agreed that what had been offered to him was only a tentative area which was subject to change on 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).

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12. 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 respondent to the complainant vide offer of possession letter dated 17.10.2018 does not come to be more than 15%. In the present case, increase in the area about 7% more than the tentative allotted super area which seems to be within the reasonable limits. Counsel for the complainant has failed to cite judgement to the contrary till date after conclusion of arguments on 30.08.2019. As stated hereinabove what had been offered to the complainant vide flat buyer's agreement dated 04.12.2012 (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 respondent-



promoter 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. The increase in the area is within the reasonable limits. After receipt of the offer of possession letter he did not send the protest letter to the respondent. Above all, this is not the case of the complainant that he 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.

13. Delay in completion of the project is entirely attributable to the respondent. The complainant has made the payment within time. However, it is a matter of fact, that the cost inflation index continues to increase with the passage of time and the complainant must not remain oblivious of this universal true fact. Hence, the complainant is held entitled to bear 50% of the



amount towards cost escalation (Rs. 680510/- ÷ 2 = Rs. 340255/-).

14. Demand of Rs. 80,585/- towards advance maintenance charges is set aside being illegal.

**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 14.12.2018 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.

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

16. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 04.06.2016 till the date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order.
17. Escalation charges are reduced to 50% i.e. Rs. 3,40,255/-.
18. Demand of Rs. 80,585/- towards advance maintenance charges is set aside being illegal.
19. The complaint stands disposed of accordingly.
20. The case file be consigned to the registry.

**N. K. Goel**

(Former Additional District and Sessions Judge)  
Registrar –cum- Administrative Officer (Petition)  
Haryana Real Estate Regulatory Authority, Gurugram  
(Authorised by resolution no. HARERA,  
GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July 2019)  
under section 81 of the Real Estate (Regulation and Development)  
Act, 2016.

Dated: - 03.09.2019

Order ratified by the Authority as above.

**(Samir Kumar)**  
Member

**(Subhash Chander Kush)**  
Member

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -03.09.2019





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1. The actual date of handing over of physical possession and the provided date of giving possession as per the BBA be mentioned specifically in the judgement.
  2. Section 18(1)(b) alongwith rule 15, be also mentioned, by virtue of which the prescribed rate of interest is being awarded.

*Done*  
29/9/19  
member (SCK)

*[Signature]*  
(Samir Kumar)

Member

Registrar-cum-Administrative Officer (Petitions)

523/2019

As per the orders dated 04.09.2019 of the Ld. Members para <sup>16</sup> shall now be read as under-

The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 04.06.2016 till the date of offer of possession letter dated 17.10.2018 as provided under proviso to Section 18(1)(b) read with Rule 15 of the Rules within a period of 90 days from this order.

*N.K. Goel*  
6-9-19  
N.K. Goel

(Former Additional District and Sessions Judge)  
Registrar -cum- Administrative Officer (Petition)  
Haryana Real Estate Regulatory Authority, Gurugram  
(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16<sup>th</sup> July 2019)  
under section 81, Real Estate (Regulation and Development) Act, 2016.

Dated: 06.09.2019

Judgement uploaded on 10.09.2019