

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

Complaint no. : 785 of 2019
Date of First hearing: 14.08.2019
Date of decision : 03.09.2019

1. Mr. Ankit Pagoria
2. Mr. Krishan Gopal

R/o 3, Govind Kunj West Arjun Nagar,
Laxman Nagar, Agra (U.P.) - 282001.

Complainants

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/16th July
2019/16th July 2019) under section 81, Real Estate (Regulation
and Development) Act, 2016

ATTENDANCE:

Ms. Priyanka Agarwal

Representative for the complainants

Shri Kuldeep Kohli

Advocate for the complainants

Ms. Meena Hooda

Advocate for the exparte respondent



EXPARTE ORDER

1. The present complaint filed on 13.03.2019 relates to a flat buyer's agreement dated 24.01.2013 executed between the complainants and the respondent promoter, registered with this Authority vide registration no. 7 of 2018 dated 03.01.2018, in respect of flat measuring 1470 sq. ft. super area bearing no. T2- 1704, 16th floor, Tower T 2 of the project, namely "Park Generations" situated in Sector 37 D, Gurugram (in short, the subject flat) for a total cost of Rs. 6812160/- (page 7 of the complaint) and the complainant opted for construction linked payment plan. Out of total consideration the complainants till date have paid a sum of Rs. 7383988/- till October, 2018 in time bound manner.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Park Generations", 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.	T2-1704, 16 th floor in tower T2.
5.	Measuring area of the allotted flat	1,470 sq. ft.
6.	Allotted area	1521 sq. ft.



7.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.
8.	Date of completion as per RERA registration certificate.	30.4.2018 (Tower T-6, 17 & 19) and 30.11.2018(Tower T-14, 15 &18)
9.	Date of execution of flat buyer agreement	24.01.2013 (Annx P/4)
10.	Payment Plan	Construction linked payment plan
11.	Basic sale price of the allotted unit	Rs.54,24,300/- and other charges (Pg. 59 of the complaint)
12.	Total consideration as per statement of accounts cum invoice	Rs. 79,29,984.95/- (Pg.19 of the complaint)
13.	Total amount paid by the complainants till date	Rs. 67,97,685.75/- (as per Pg.19 of the complaint) *
14.	Due date of delivery of possession as per clause 3.1 of the agreement dated 24.01.2013	24.07.2016 (Note - 36 months plus 180 days grace period from the date of execution of agreement)
15.	Date of offer of possession letter	17.10.2018 (Annx P/1)
16.	Delay in handing over possession	2 years, 2 months and 23 days (approx.)

**Statement of accounts cum invoice is a part of the offer of possession letter dated 17.10.2018. As per this document the complainants made the payment of Rs. 6797685.75 paise as on the said date. However, according to the complainants they have made the payment of Rs. 73,83,908/- till the month of October, 2018. They have shown the payment of Rs. 586303/- made on 25.10.2018 vide receipt no.*



2018/1400005422. It means that the complainants deposited the said amount of Rs.586303/- after 17.10.2018. Thus, if we calculate the two amounts it will come to Rs. 7383988.75 paisa. Thus, there is evidence on record to prove that the complainants till date have made the payment of Rs. 7383988.75 paisa to the respondent towards the cost of flat.

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 complainants 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 which is not in a habitable condition 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 1470 sq. ft. to



1521 sq. ft. in an inhabitable condition which is unjustified and illegal without corresponding increase in the carpet area and causing cost escalation. According to the complainant, the respondent has forcibly imposed the "cost escalation" in the sum of Rs. 5,45,628/- which is totally illegal, arbitrary, unjustified and unacceptable as per cost indexation of 18 years. It is stated that the maintenance charges are to be paid monthly as per the Haryana Apartment Owners Act and hence the demand for annual charges is illegal. Questions regarding GST, demand of Rs. 54,625/- towards VAT, advance maintenance charges of Rs. 64,612/- from 13.02.2019 to 12.02.2020 have also been raised, though as per clause 2.11 of the FBA the complainants are made entitled to just Rs. 5/- per sq. ft. per month of the super area as compensation for the delay.

5. Hence, this complaint.
6. In the application for amendment the complainants have stated that they do not wish to withdraw from the project.
7. The following issues have been raised to be decided by the

Authority: -

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1. "Whether the respondent has breached the provisions of the Act as well the agreement by not completing the construction of the said unit in time bound manner?
2. Whether the respondent has unjustly enriched them by misusing the hard- earned money of 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 complainant in case of delayed payment by the complainant?
4. Whether the respondent is liable to pass the input credit to the complainant which was the additional burden of GST imposed on the complainant due to inordinate delay in handing over of the possession?
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 the flat buyer agreement clause of escalation cost, many hidden charges which will be forcedly

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imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided drafting of FBA with a malicious and fraudulent?

7. Whether the respondent demanded advance maintenance charges from 13.02.2019 to 12.02.2020 unjustified, unacceptable, illegal and unilateral?

8. Whether the respondent demanded HVAT charges from complainant unjustified, unacceptable, illegal and unilateral?

9. Whether the respondent collected more than 95% amount from complainant but not made expenses on particular project so project is delayed?

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 after long delayed offer the possession without amenities and flat still not in habitable condition is illegal and arbitrary?"

8. The reliefs sought are detailed as under: -

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1. "Pass an order for delay interest on paid amount of Rs. 73,83,988/- from January, 2016 alongwith pendent lite and future interest till actual possession thereon @ 18%;
2. Direct the respondent to quash the escalation cost.
3. Direct the respondent to quash the increase in super area of flat as carpet area remains same as previous.
4. Direct the respondent to quash the VAT charges and to pay by own.
5. Direct the respondent to quash the demand of advance maintenance as of now and payment of GST amount.
6. Pass an order for payment of GST amount levied upon the complainant taken benefit of input credit by builder."
9. Notice of the complaint has been issued to the respondent by speed post and also on given email address at sales@bptp.com, customercase@bptp.com and secretarial@bptp.com and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.



10. It is not out of place to mention here that reply has been filed on behalf of the respondent after the conclusion of the hearing on 14.08.2019 which is not being considered in view of the judgement in AIR 1964 SC 993. Arguments heard.

Issue wise findings of the Authority: -

11. **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 24.01.2013 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 24.07.2016. 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 more than 2 years in offering possession of the subject flat to the

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complainant. Hence, it is held that there was a delay of more than 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 agreement for sale and also violation of section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act). Since on the date of coming into force of the Act the project in question was not completed it must be held to be an "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder.

12. Therefore, in the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum as prescribed under section 18 (1) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

13. From a perusal of clause 2.1 of the flat buyer agreement, there is evidence on the record to show that the respondent had allotted an approximate super area of 1,470 sq. ft (136.566 sq. mtrs.) 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 complainants had themselves been made to understand and they had agreed that what had been offered to them 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).

14. 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% but is rather less than 5 % which is within the reasonable limits as



contended on behalf of the complainants. As stated hereinabove what had been offered to the complainant vide agreement for sale dated 24.01.2013 (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 which must be considered "on going" project. Above all, this is not the case of the complainants that they are not ready to accept the increased super area. Therefore, in the considered opinion of this Authority, the complainants are 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.

15. Demand of VAT, GST is as per the prevalent statutes and the terms and conditions of flat buyers agreement and if there is



any extra payment made by the complainants under these heads the respondent shall adjust the same in future payment, if any, to be made by the complainants or shall refund the same to complainants forthwith.

16. As discussed above, the demand for additional charges due to the increased in super area without corresponding increase in the carpet area has been held to be perfectly justified. Therefore, the demand for additional charges cannot be struck down and is also not justified or arbitrary or is an act of unfair trade practice.

17. Clause 7.5 of the FBA deals with the statutory taxes, maintenance charges and other dues. It inter alia provides for execution of a maintenance agreement in the standard format prescribed by the maintenance service provider and binds the allottee (s) to pay annual maintenance charges and such other charges as may be demanded by the maintenance service provider within 30 days of the offer of possession and to abide by the terms and conditions of the maintenance agreement. It seems that no such maintenance agreement has been executed between the allottee (s) and any such maintenance provider in the project in question. Therefore, the demand of the advance



maintenance charges of Rs. 64612/- from 13.02.2019 to 12.02.2020 is totally unjustified. The respondent shall, however, be entitled to demand the maintenance charges as per the Haryana Apartment Ownership Act, 1983 till the execution of the maintenance agreement. Hence, the demand of Rs. 64612/- under this head is held to be illegal.

18. Delay in completion of the project is entirely attributable to the respondent. The complainants have 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 complainants must not remain oblivious of this universal true fact. Hence, the complainants are held entitled to bear 50% of the amount towards cost escalation (Rs. 5,45,628/- ÷ 2 = Rs.2,72,814/-).

Findings of the Authority: -

19. 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.

20. Suffice is to say that the award of payment of compensation is outside the jurisdiction of the authority and the complainants are at liberty to file an application before the adjudicating officer under section 71 of the act alongwith the enabling section.

Decision and directions of the Authority:-

21. 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 till the

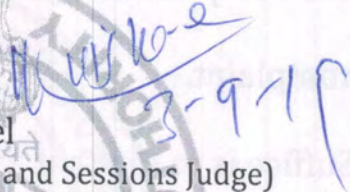
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date of offer of possession letter dated 20.10.2018 within a period of 90 days from this order.

22. Demand of Rs. 64,612/- towards advance maintenance charges is held to be illegal which the respondent shall be entitled to charge as per the Haryana Apartment Ownership Act, 1983. Escalation charges are reduced to Rs. 2,72,814/-.

23. The complaint stands disposed of accordingly.

24. The case file be consigned to the registry.


N.K. Goel

(Former Additional District and Sessions Judge)


Registrar-cum-Administrative Officer (Petitions)

(Haryana Real Estate Regulatory Authority, Gurugram)

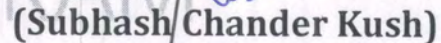
(Authorised by resolution no. HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019) under section 81, Real Estate (Regulation and Development) Act, 2016

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.

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Member (SCK)

Samir Kumar
(Samir Kumar)

Member

Registrar-cum-Administrative Officer (Petitions)

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As per the orders dated 04.09.2019 of the Ld. Members para 21 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. 24.07.2016 till the date of offer of possession letter dated 20.10.2018 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.

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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/16th July 2019)
under section 81, Real Estate (Regulation and Development) Act, 2016.

Dated: 06.09.2019

Judgement uploaded on 10.09.2019