

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

Complaint no. : 543 of 2019
Date of First hearing: 08.08.2019
Date of decision : 03.09.2019

Mr. Santusht Bhatia

R/o. Flat no.13, Vishwas Apartment, plot
no.6A, Sector-23, Dwarka,

New Delhi-110075

Complainant

Versus

1. M/s BPTP Ltd.,
Office at: M-11, Middle Circle, Cannaught
Circus, New Delhi – 110001.

Respondent

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

APPEARANCE:

Shri Kuldeep Kohli
Ms. Meeena Hooda

Advocate for the complainant
Advocate for the respondent
(exparte)

EXPARTE ORDER

1. The present complaint filed on 13.02.2019 relates to a flat
buyer's agreement dated 09.05.2013 executed between the

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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- 1704, 17th 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.56,74,240/- and other charges totalling to Rs. 70,71,120/- 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 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.	T1-1704, 17 th floor in tower T1.
5.	Measuring area of the allotted flat	1760 sq. ft.
6.	Area of flat in offer of possession	1813 sq. ft (As per annexure P1)
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	10.01.2013 (As per annexure P3, page 34)



10.	Date of execution of flat buyer's agreement	09.05.2013 (Annx P4, page 36)
11.	Payment Plan	Construction linked payment plan (Pg.35 of the complaint)
12.	Basic sale price of the allotted unit	Rs. 56,74,240/- (Pg. 41 of the complaint)
13.	Total consideration	Rs. 70,71,120/- (Pg.35 of the complaint)
14.	Total amount paid by the complainant till date	Rs. 77,23,245.45/- (as per averments made in complaint and annexure P2 (colly), P23-33)
15.	Due date of delivery of possession as per possession clause 3.1 of the agreement taken from similar agreement	09.11.2016 (Note - 36 months plus 180 days grace period from the date of execution of agreement)
16.	Date of offer of possession letter	17.10.2018 (Page 15 of complaint)
17.	Delay in handing over possession	1 year 11 months 8 days (approx.)

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

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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 1 year and 11 months approximately 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 1813 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 demands raised by the respondent from time to time, making a total payment of Rs. 77,23,245.45/- which constitutes to approximately 100% of the total sales consideration in respect of the subject flat. It is stated that offer of possession was given to the complainant on



17.10.2018 but the flat in question is not in habitable condition. According to the complainant, the respondent had arbitrarily burdened the complainant under the head "cost escalation" in the sum of Rs.6,50,377/- that too for its own default in offering the possession with the delay of approximately 1 year 11 months approximately. It is submitted that the respondent charges @ 18% p.a. compounded interest in case of any delay in making payment of instalment, the complainant is made entitled to a penalty of @ Rs.5 per month on the deposited amount for the delay in handing over possession of the subject flat by the respondent which is illegal.

5. 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 constitutes the unfair trade practice.
6. According to the complainant the respondent has illegally raised demands of VAT and further he is not liable to pay GST amount raised due to delay on the part of respondent.
7. The complainant does not want to withdraw from the project.
Hence, this complaint.

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8. The following issues have been raised by the complainant 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 complainant is entitled to interest on the deposited amount for the period of delay in offer of possession at the same rate 18% complainant is entitled under the facts and circumstances of the present case?
4. Whether the respondent is liable to pass the input credit to complainant which were the additional burden of GST imposed on the complainant due to inordinate delay in handing over of the possession?
5. Whether the demand for cost escalation, while the delay is at the end of respondent, is not justified, arbitrary and unfair trade practice?



6. Whether the respondent demanded advance maintenance charges from 15.02.2019 to 14.02.2020 unjustified, unacceptable, illegal and unilateral?
7. Whether the respondent demanded HVAT charges from complainant unjustified, unacceptable, illegal and unilateral?
8. 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?
9. Whether the respondent collected the more than 95% amount from complainant but not made expenses on particular project, so project is delayed?
10. Whether it is justified the respondent has passed more than 7 years in development of project and still project incomplete?
11. Whether respondent after long delayed offer the possession without amenities and flat still not in habitable condition is illegal and arbitrary?"

9. The reliefs sought are detailed as under: -

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1. Direct the respondent to pay delay interest on paid amount of Rs.77,23,245/- from May 2016 alongwith pendete lite and future interest till actual possession thereof @ 18%.
 2. Direct the respondent to quash the escalation cost, increase in the super area of the flat, VAT charges and demand of advance maintenance as of now.
 3. Direct the respondent for payment of GST amount levied upon the complainant and taken the benefit of input credit by the builder.
10. Notice of the complaint has been issued and served upon to the respondent through speed post on 15.02.2019 as well as on its email address provided to the Authority on iambagarwal@gmail.com, customercare@bptp.com and sales@bptp.com . Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint within the statutory period. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.

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11. Reply filed thereafter has been taken on record subject to all just exceptions and is not being considered in view of the judgment in AIR 1964 SC 993.

Issue wise findings of the Authority: -

12. **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 flat buyer's agreement of respondent/promoter 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 from date of execution of agreement i.e. 09.05.2013 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 09.11.2016. 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 1 year 11 months 8 days 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 1 year 11 months 8 days 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.

13. 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, respondent be held liable accordingly.

14. 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

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tentative layout plan of the flat as annexure A and specification as per annexure C attached with the agreement).

15. As stated hereinabove what had been offered to the complainant vide flat buyer's agreement dated 09.05.2013 (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. Even otherwise increase ^{of} from the super area from 1760 sq.ft. to 1813 sq.ft. is less than 5% which is within the reasonable limits and conceded on behalf of complainant. 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. Complainant has also not opted to withdraw from the project. Payment of GST and other charges by the complainant is as per the statutory provisions which he is bound to pay. 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 or other charges is perfectly justified.

16. Demand of advance maintenance charges for the period 15.02.2019 to 14.02.2020, if any, is illegal and set aside.

17. Further, suffice is to say that the award of payment of compensation is outside the jurisdiction of the Authority and the complainant is at liberty to file an application before the adjudicating officer under Section 71 of the Act along with the enabling sections/provisions.

18. 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. 6,50,376/- ÷ 2 = Rs. 3,25,188/-)

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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.

Decision and directions of the Authority: -

20. 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. 09.11.2016, till the date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order.

21. Escalation charges are reduced to Rs. 3,25,188/-.
22. Demand of advance maintenance charges for the period 15.02.2019 to 14.02.2020, if any, is illegal and set aside.
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

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.

Member SCK

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(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 20 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. 09.11.2016 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
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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