

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

Complaint no. : 519 of 2019
Date of First hearing: 08.08.2019
Date of decision : 03.09.2019

1. Mr. Manish Sheokand
2. Mrs. Kavita Kataria

Complainants

Both R/o. – H. no. 792, Sector-9, Gurugram,
Haryana

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

Respondent

Coram:

Sh. 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 of the Real Estate (Regulation and Development)
Act, 2016.

APPEARANCE:

Sh. Gulab Singh

Ms. Meena Hooda

Advocate for the complainants

Advocate for the respondent

EXPARTE ORDER

1. The present complaint filed on 04.02.2019 relates to a flat
buyer agreement dated 07.01.2013 executed between the



original allottee Sh. Dharambir 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- 1503, 15th floor, Tower T2 of the project, namely, "Park Generations" situated in Sector 37 D, Gurugram (in short, the subject flat) for a basic sale price of Rs. 52,40,550/- and other charges and the original allottee who subsequently transferred it to the complainants and acknowledged by the respondent vide letter ref. no. 11138 dated 30.10.2013 and transferred it to the complainants vide letter ref. no. 73/147454 dated 06.11.2013 opted for construction linked payment plan.

2. The particulars of the complaint are as under: -

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|----|--|---|
| 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. | T2-1503, 15 th floor in tower T2. |
| 5. | Measuring area of the allotted flat | 1,470 sq. ft. |
| 6. | RERA Registered/ unregistered | Registered vide no. 7 of 2018. |
| 7. | Date of completion as per RERA registration certificate. | 30.4.2018 (Tower T-76, 17 & 19) and 30.1 1.2018(Tower T-14, 15 & 18) |

| | | |
|-----|---|--|
| 8. | Date of allotment letter | 19.12.2012 |
| 9. | Date of execution of flat buyer agreement | 07.01.2013 |
| 10. | Payment Plan | Construction linked payment plan |
| 11. | Basic sale price of the allotted unit | Rs. 52,40,550/- As per the flat buyer agreement (Page 37) |
| 12. | Total consideration as per statement of account dated 09.12.2016 | Rs. 66,28,410/- (Page 69) |
| 13. | Total amount paid by the complainants till date | Rs. 59,94,100.28 As per the statement of account dated 09.12.2016 (Page 82) |
| 14. | Due date of delivery of possession as per possession clause 3.1 of the agreement dated 07.01.2013 | 07.07.2016 (Note - 36 months plus 180 days grace period from the date of execution of agreement) |
| 15. | Date of offer of possession letter | 25.10.2018 |
| 16. | Delay in handing over possession | 2 years 3 months 18 days |

3. As per clause 3.1 of the agreement, the respondent had agreed to handover the possession of the subject flat to the complainants 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 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 25.10.2018 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 25.10.2018 super area of the flat was found to be unilaterally increased by the respondent from 1470 sq. ft. to 1520 sq. ft. without corresponding increase in the carpet area and without the consent and knowledge of the complainants 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 complainants 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. 59,94,100.28 which constitutes to approximately 95% of



the total sales consideration in respect of the subject flat. According to the complainants, the respondent had arbitrarily burdened the complainants under the head "cost escalation" in the sum of Rs. 5,45,269.60 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 complainants are 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. According to the complainants, 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. Issues regarding charging of GST, cost escalation etc have also been raised. Hence, this complaint.

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

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1. Whether the complainants have violated the terms and conditions of the flat buyer agreement 07.01.2013?
2. Whether the respondent company had offered the actual physical possession of the flat/unit to the complainants within the time from the date of flat buyer agreement dated 07.01.21013?
3. If, the issue no.2 is decided in the favour of the complainants in that case, whether the complainants are entitled for interest on account of non-handing of possession of the flat/unit in time?
4. Whether the respondent company is liable to compensate the complainants for not handing over the possession within time?
5. Whether the respondent company has violated section 18 of the RERA Act, 2016?
6. Whether the respondent company is liable to pay delayed interest to the complainants from 06.02.2016 to till date and liable to be prosecuted for the violation of RERA provisions?



7. Whether the respondent had denied and ignored just and genuine request of the complainants?

7. The reliefs sought are detailed as under: -

1. Direct the respondent to pay the delayed interest on the amount by the respondent from the complainants in respect of the unit bearing no. T2-1503 having tentative area of 1470 sq. ft. in the project Park Generations, Sector-37D, Gurugram.
2. Direct the respondent to give up the escalation cost as per section 18 of the RERA Act.
3. Direct the respondent to refund the transfer fees which is illegally taken by the respondent from the complainants regarding the transfer charges of Rs. 2,06,101/- in respect of transfer of the unit in the name of the complainants.
4. Direct the respondent to pay the litigation charges of Rs. 1,00,000/- to the complainants.
5. Direct the respondent to pay Rs. 17,00,000/- on account of delayed possession of the said flat/unit to the complainants.

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6. Direct the respondent not to charge amount of Rs. 5,45,259.60 and Rs. 1,22,488/- on account of GST from the complainants.
8. Notice of the complaint has been issued to the respondent through speed post as well as on its email address provided to the Authority 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 within the stipulated period. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.
9. 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: -

10. **All issues:** -As per the sufficient and unchallenged documentary evidence filed by the complainants on the record and more particularly the flat buyer agreement (copy annexure C2), there is every reason to believe that vide the

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flat buyer agreement dated 07.01.2013 the respondent had agreed to handover the possession of the subject flat to the original allottees (and now the complainants) 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 complainants on or before 07.07.2016. 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 complainants on 25.10.2018 which further clearly shows that the respondent has caused delay of about 2 years 3 months 18 days in offering possession of the subject flat to the complainants. Hence, it is held that there was a delay of about 2 years 3 months 18 days in offering the possession of the subject flat to the complainants and this was in violation of the terms and conditions of the agreement for sale and also violation of sections 11(4)(a) and section 18 of the Real Estate (Regulation and Development) Act, 2016.

11. 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. mts.) 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 herself been made to understand and had agreed that what had been offered to her 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).

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 25.10.2018 does not come to

be more than 15% and is even less than 5% which can be said to be within reasonable limits and is upheld. As stated hereinabove what had been offered to the complainant vide flat buyer agreement dated 07.01.2013 (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. 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. Demand of GST etc is as per the statutory provisions.



13. 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 is entitled for delayed possession charges at the prescribed rate of interest of 10.45% per annum as prescribed in rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 18 of the Act.

14. Demand in respect of transfer charges, GST, cost escalation etc. has been raised as per the statutory provisions and the terms and conditions of the flat buyer agreement and hence, is perfectly legal.

15. 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. 5,45,269.60/- ÷ 2 = Rs. 2,72,634.80/-).

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Findings of the Authority: -

16. 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 complainants 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:-

17. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016S 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 date of offer of possession letter dated 25.10.2018 within a period of 90 days from this order.

18. Escalation charges are reduced to Rs. 2,72,635/-.
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 (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 of the Real Estate (Regulation and Development) Act, 2016.

Dated: 03.09.2019

The above order is perused and ratified.

(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.

04/09/19
member (SCK)

(Samir Kumar)

Member

Registrar-cum-Administrative Officer (Petitions)

5/9/19

As per the orders dated 04.09.2019 of the Ld. Members para 17 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. 07.07.2016 till the date of offer of possession letter dated 25.10.2018 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
N.K. Goel 6-9-19

(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