

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

Complaint no. : 157 of 2019
Date of First hearing: 08.08.2019
Date of decision : 03.09.2019

Smt. Laxmi Devi

R/o. House no.783/16, Nai Basti, Basai **Complainant**
Road, Gurugram , Haryana

1. M/s BPTP Ltd.,
Office at: 28,ECE House, 1st floor, Kasturba **Respondent**
Gandhi Marg, New Delhi 110001

CORAM:

Shri N.K.Goel

(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 Abhay Jain

Advocate for the complainant

Ms. Meena Hooda

Advocate for the respondent

EXPARTE ORDER

1. The present complaint filed on 31.01.2019 relates to a flat
buyer's agreement dated 27.12.2012 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 1470 sq. ft. super area bearing no. T2- 1901, 19th 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. 54,24,300/- and other charges 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.	T2-1901, 19 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 30.1.2018(Tower T-14, 15 &18)
8.	Date of allotment letter	14.12.2012
9.	Date of execution of flat buyer agreement	27.12.2012
10.	Payment Plan	Construction linked payment plan



11.	Basic sale price of the allotted unit	Rs. 54,24,300/- As per the flat buyer's agreement on page 29
12.	Total consideration as per statement of accounts cum invoice	Rs. 89,02,303.16 As per the statement of accounts on page no 69
13.	Total amount paid by the complainant till date	Rs. 64,53,059.26 As per the statement of accounts Annexure 3 on page no 62
14.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 27.12.2012	27.06.2016 (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
16.	Delay in handing over possession	2 years 3 months 20 days

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.

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 (annexure 2 at page 64) super area of the flat was found to be unilaterally increased by the respondent from 1470 sq. ft. to 1832 sq. ft. (25% increase) 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. 64,53,059/- which constitutes to approximately 99% of the total sales consideration in respect of the subject flat as per statement of accounts (Annexure 3). 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

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the subject flat by the respondent and compensation for causing losses as provided under section 18(3) of the Act.

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. It is stated that under section 18 of the Act read with rules 15 and 16 of the Rules, the promoter has an obligation to pay interest on the delayed possession on the amount deposited by the complainant at the rate prescribed. Hence, this complaint.

6. No issues has been raised by the complainant, but as per complaint version the following issues have been raised to be decided by the Authority: -

I. Whether the respondent offered increased area in violation of BBA and the provisions of the Act?

II. Whether the respondent- promoter has offered the possession of flat with delay and in violation of the terms and conditions of the agreement for sale and its provisions of the Act? If so, to what effect?

7. The reliefs sought are detailed as under: -

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- I. Direct the respondent to revoke/waive off/ cancel/ withdraw the amount imposed by the respondent illegally, unlawfully and fraudulently such as amount of increased area, private terrace, development charges, car parking charges, cost of escalation charges, club membership charges, electronic connection charges, fire fighting charges and power-up installation charges on the flat of the complainant.
- II. Direct the respondent to pay interest for every month of delay in offering the possession of the flat since 27 December 2015 to the complainant, on the amount taken from the complainant for the sale consideration amount and additional charges for the aforesaid flat with interest at the prescribed rate as per the Act, 2016 till the respondent hands over the possession of the flat.
- III. Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.

8. Notice of the complaint has been issued and served upon to the respondent through speed post on 02.02.2019 as well as email address, namely, sales@btp.com and the delivery

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report 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 exparte against the respondent.

9. Reply to the complainant filed thereafter has been taken on record subject to all just exceptions but the same is not being considered in view of the judgment reported as AIR 1964 SC 993.

Issue wise finding of the Authority: -

10. **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 A1 at page 29), there is every reason to believe that vide the flat buyer agreement dated 27.12.2012 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

27.06.2016. 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 3 months 20 days in offering possession of the subject flat to the complainant. Hence, it is held that there was a delay of about 2 years 3 months 20 days 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 Act.

11. 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 per rule 15 of the Real Estate (Regulation and Development) Rules, 2017.

12. From a perusal of clause 2.1 of the agreement for sale, 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 complainant had herself been made to understand and she had agreed that what had been offered to her was only a tentative area which was subject to change till 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).

13. In the present case the super area increased by the respondent comes to more than 15%. As stated hereinabove what had been offered to the complainant vide agreement for sale dated 27.12.2012 (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 respondents- promoters 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. However, in any case, decrease or increase in the super area cannot



exceed as specified in the agreement. In the present case increase in the area is between 24% and 25%. Hence, increase in the super area from 1470 sq.ft. (tentative) to 1832 sq.ft. is totally unjustified, illegal, unconscious and arbitrary and by no stretch of imagination it can be said to be ^{within} reasonable limits. Hence, it is held that price/cost of the subject flat increased to that extent shall be adjusted in future payment, if any, or shall be refunded to the complainant.

Findings of the Authority: -

14. 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: -

15. 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 of the subject flat bearing no. T2-1901, 19th Floor, Tower T2 in the project "Park Generations", Sector 37D, Gurugram till the date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order.
16. It is held that the price/cost of the subject flat increased on account of increase in super area from 1470 sq.ft. (tentative) to 1832 sq.ft. is illegal and the same shall be adjusted in the future payment, if any, or shall be refunded to the complainant.
17. The complaint stands disposed of accordingly.
18. The case file be consigned to the registry.

Shri N.K.Goel

(Additional District and Sessions Judge)

Registrar-cum-Administrative Officer (Petitions)


(Haryana Real Estate Regulatory Authority, Gurugram)


(Authorised by resolution no.

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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

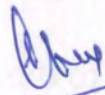
Haryana Real Estate Regulatory Authority, Gurugram

Dated: -03.09.2019

(1) The actual dt of grant handing over
of physical possession & the promised
dt of giving possession as per the BTA
be mentioned specifically in the Judgements.
(2) Section 18 (b) along with the rule 15, be
also mentioned, by virtue of which,
the prescribed rate of interest is being
awarded.

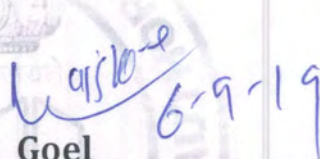
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Registrar cum A.O.:


03/09/19

As per the orders dated 04.09.2019 of the Ld. Members para **JS** ✓ 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. 27.06.2016 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

(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