

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

Complaint no. : 417 of 2019
Date of First hearing: 08.08.2019
Date of decision : 03.09.2019

KC International Ltd.

Address at: BM-2A, Dilkush Industrial Estate, GT Karnal Road, Azadpur, Delhi **Complainant**

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

2. Country Wide Promoters Pvt. Ltd.
M-11, Middle Circle, Connaught Circus, New Delhi - 110001

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:

Ms. Vridhi Sharma

Ms. Sakshi Khatter

Advocate for the complainant

Advocate for the ex-parte
respondent

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3-9-19

EXPARTE ORDER

1. The present complaint filed on 07.02.2019 relates to a flat buyer agreement dated 16.11.2012 executed between the complainant and the respondent promoter, (project is 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- 1202, 12th floor, Tower T1 in 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 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.	T1-1202, 12 th floor in tower T1.
5.	Measuring area of the allotted flat	1760 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 offer of possession	17.10.2018

9.	Date of execution of flat buyer agreement	16.11.2012
10.	Payment Plan	Construction linked payment plan
11.	Basic sale price of the allotted unit	Rs. 62,74,400/- As per the flat buyer's agreement Annexure A-4
12.	Total consideration as per statement of accounts cum invoice	Rs. 91,90,945.44 As per the statement of accounts cum invoice on page 115
13.	Total amount paid by the complainant till date	Rs. 77,78,815/- As per the statement of accounts cum invoice on page 115
14.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 16.11.2012	16.05.2016 (Note - 36 months plus 180 days' grace period from the date of execution of flat buyer's agreement)
15.	Date of offer of possession letter	17.10.2018
16.	Delay in handing over possession	2 years 5 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.

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4. It is stated that vide letter dated 17.10.2018 i.e. after a delay of approximately 2 years 5 months 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 subject flat was found to be unilaterally increased by the respondent from 1760 sq. ft. to 1813 sq. ft. (3% 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. 77,78,815/- 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. 6,50,377.49 that too for its own default in



offering the possession with the delay of approximately more than two years. It is submitted that the complainant made almost all of its payments on time and availed timely payment discount of Rs. 2,42,560/-. 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 submitted that the compensation amount calculated to the tune of Rs. 2,54,819/- is well known to the respondent as to how have they figured out this amount and they are bound to submit a detailed submission in this regard.

6. It is submitted that the complainant intends to seek possession of the subject flat and vide emails dated 08.05.2018 and 17.11.2018, the complainant asked the respondent for compensation for the period of delay on the amount already paid by it to the respondent but to of no avail.

7. It is stated that the respondent vide its reminder letter dated 16.11.2018 had raised an amount of Rs 19,95,130/- including

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stamp duty charges of Rs 5,83,000/- as outstanding balance which is clearly arbitrary and illegal in nature. It is submitted that the complainant vide its letter dated 03.12.2018 wrote to the complainant that they are raising demands without looking into the mails sent by the complainant and the same are arbitrary in nature. It is pertinent to mention here that respondent never raised demand as per the stage of the construction and they never followed their own payment plan of raising demands as per the construction status.

8. It is stated that vide letter dated 17.10.2018, the respondent company had issued offer of possession for unit no. T1-1202 subject to payment of a huge arbitrary demand of Rs. 11,57,311.44. which demand is illegal in nature as the respondent had themselves delayed the project for several years and without adjusting the delay compensation amount they have raised such an amount which is well known to them as to how have they calculated such figure. Hence, this complaint.

9. The following issues have been raised to be decided by the authority: -

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1. Whether there has been a failure on the part of the respondent in making the delivery of the unit to the complainant within the stipulated time period?
2. Whether the complainant is entitled to immediate possession along with compensation for delayed possession, and at what rate?

10. The reliefs sought are detailed as under: -

1. Direct the respondent to deliver immediate possession of the apartment no. T1-1202 in the project Park Generations located at sector 37D, Gurgaon, Haryana along with all the promised amenities and facilities and to the satisfaction of the complainant.
2. Direct the respondent to make the payment of compensation @18 % p.a. on the amount already paid by the complainant to the respondent, from the promised date of delivery of the flat i.e. 16.11.2015 till the actual delivery of the flat to the complainant.
3. Set aside the arbitrary and illegal demand raised by the respondent vide letter dated 17.10.2018.



11. Notice of the complaint has been issued to the respondent via speed post and on email address i.e. customer@bptp.com and sales@bptp.com 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 statutory period. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.
12. 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.

Finding of the authority: -

13. **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 A4), there is every reason to believe that vide the flat buyer agreement dated 16.11.2012 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 16.05.2016. However, the copy of 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 5 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 year 5 months 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.

14. Therefore, 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 in rule 15 of Real Estate (Regulation and Development) Rules 2017 from the due date of possession till the offer of possession.

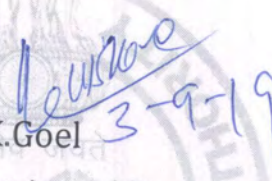
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15. Delay in completion of the project is entirely attributable to the respondent. The complainant has made the payment within time. However, it is matter of fact, that the cost inflation index continues to increase with the passage of time and the 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. 6,50,377.49 ÷ 2 = Rs. 3,25,188/-).
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 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.
17. Complainant may file a complaint for compensation before the adjudicating officer if he so desires.

Decision and directions of the Authority: -

M. N. K. K. K.
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18. 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 date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order.
19. Escalation charges are reduced to Rs. 3,25,188/-.
20. The complaint stands disposed of accordingly.
21. 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)

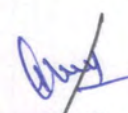
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Development) Act, 2016

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.

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Member (SCK)

b
(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 12 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. 16.05.2016 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.

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

Dated: 06.09.2019

Judgement uploaded on 10.09.2019