

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

Complaint no. : 149 of 2019
Date of First hearing: 08.08.2019
Date of decision : 03.09.2019

Mr. Kapil Kumar

R/o. 46, Lord Buddha Apartments, Inder
Enclave New Rohtak Road, New Delhi-
110087

Complainant

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.

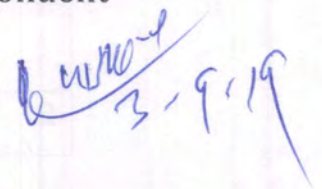
APPEARANCE:

Sh. Kuldeep Kohli

Ms. Meena Hooda

Advocate for the complainant

Advocate for the respondent


3-9-19

EXPARTE ORDER

1. The present complaint filed on 15.01.2019 relates to a flat buyer's agreement dated 23.01.2013 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. T3- 503, 5th floor, Tower T3 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 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. | T3-503, 5 th floor in tower T3. |
| 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 | 23.01.2013 |
| 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 (Annexure P4) and Rs. 53,13,989.20 as per the Statement of account cum invoice Page 18 |
| 12. | Total consideration as per statement of accounts cum invoice | Rs. 7617739.11 As per the statement of accounts cum invoice at page 18 |
| 13. | Total amount paid by the complainant till date | Rs. 64,92,685/- As alleged by the complainant |
| 14. | Due date of delivery of possession as per possession clause 3.1 of the agreement dated 23.01.2013 | 23.07.2016 (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 |
| 16. | Delay in handing over possession | 2 years 2 months 25 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

Handwritten signature
3-9-19



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, 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 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 1520 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. 64,92,685/- 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. 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 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. 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. Issue regarding demand of GST has also been raised. Hence, this complaint.

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

Authority: -

Handwritten signature
3-9-19



1. Whether the respondent has breached the provisions of the Act as well as 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 complainant which was the additional burden of GST imposed on the complainant due to inordinate delay in handing over of the possession?
5. Whether flat buyer's agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as

tactics and practice used by builder in guise of a biased, arbitrary and one sided drafting of the agreement with a malicious and fraudulent intention?

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

7. Whether it is justified the respondent has passed more than 7 year in development of project and still project incomplete?

7. The reliefs sought are detailed as under: -

1. Direct the respondent to pay monthly interest on the amount collected till date with immediate effect.
2. Direct the respondent to immediately hand over the possession of unit in habitable condition with all amenities mentioned in the brochure.
3. Direct the respondent to pay for delay interest on paid amount of Rs. 64,92,685 /-from January, 2016 along with pendent lite and future interest till actual possession thereon @ 18 %.
4. Direct the respondent to give up the escalation cost.



5. Direct the respondent to quash the VAT Charges.
6. Direct the respondent to quash the VAT charges and the demand of advance maintenance as of now.
8. Notice of the complaint has been issued to the respondent through speed post as well 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. Accordingly, the Authority is left with no other option but to decide the complaint exparte against the respondent.

Issue wise findings of the Authority: -

9. **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 P4), there is every reason to believe that vide the flat buyer agreement dated 23.01.2013 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 23.07.2016. 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 about 2 years 2 months 25 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 2 years 2 months 25 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.

10. 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).

11. *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% and is even less than 5% which can be said to be within reasonable limits and is conceded on behalf of the complainant. As stated hereinabove what had been offered to the complainant vide flat buyer agreement dated 23.01.2013 (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.

12. 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 Haryana Real Estate (Regulation and Development) Rules, 2017.

13. 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. 5,45,269.60/- ÷ 2 = Rs. 2,72,634.80/-).

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 i.e. 2307.2016 till the date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order. Thereafter, the monthly payment of interest till handing over of the possession so accrued shall be paid on or before 10th of subsequent month.
16. Escalation charges are reduced to Rs. 2,72,635/-.
17. The complaint stands disposed of accordingly.

Handwritten signature
3-9-19



HARERA
GURUGRAM

Complaint No. 149 of 2019

18. 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

HARERA
GURUGRAM

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.

Shy
04/9/19
Member (SCK)

✓
(Samir Kumar)
Member

Registrar-cum-Administrative Officer (Petitions)

149/19

As per the orders dated 04.09.2019 of the Ld. Members para 15 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. 23.07.2016 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
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