

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

Complaint no. : 2216 of 2018
Date of First hearing: 21.08.2019
Date of decision : 03.09.2019

1. Mr. Sanjay Goel
2. Mrs. Shelly Goel

R/o. House no. 587, Sector- 15,
Faridabad (Haryana) – 121007.

Complainants

Versus

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

Respondent.

CORAM:

N. K. Goel

(Former Additional District and Session 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:

Shri Kuldeep Kohli, Adv. Alongwith

Ms. Priyanka Agarwal

Ms. Meena Hooda

Representative of the complainant

Advocate for the respondent.

W. K. Kohli
3-9-19



EXPARTE ORDER

1. The present complaint filed on 09.01.2019 relates to a flat buyer agreement dated 29.04.2014 executed between the complainants and the respondent promoter, registered with this authority vide registration no. 7 of 2018 dated 03.01.2018 (as per record), in respect of flat measuring 1470 sq. ft. super area bearing no. T3- 1503, 15th floor, tower T 3 of the project namely, "Park Generations" situated in Sector 37 D, Gurugram, (in short, the subject flat) for a basic sale price of Rs. 53,83,200 and other charges as per the flat buyer's agreement dated 09.04.2014 and the complainant opted for construction linked payment plan though according to them the booking was made in the year 2011.

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 colony.
4.	Flat/unit no.	T3-1503, 15 th floor in tower T3.
5.	Measuring area of the allotted	1,470 sq. ft.



	flat	
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 execution of flat buyer's agreement	29.04.2014 (Pg. 51 of the complaint)
9.	Payment Plan	Construction linked payment plan (Pg.82 of the complaint)
10.	Basic sale price of the allotted unit	Rs.53,80,200/- (Pg. 29 of the complaint)
11.	Total consideration as per statement of accounts cum invoice	Rs. 77,05,646.87/- including taxes (Pg.19 of the complaint)
12.	Total amount paid by the complainants till date	Rs. 65,69,704.72 (as per Pg.19 of the complaint)
13.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 29.04.2014	29.10.2017 (Note - 36 months plus 180 days' grace period from the date of execution of agreement)
14.	Date of offer of possession letter	17.10.2018 (Annx P1)
15.	Delay in handing over possession	11 months and 12 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. However, according to the complainants by the time the flat buyer's agreement was executed between the parties, the respondent had already taken huge payment from the complainant and that 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 one year 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 though 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. 65,67,275 till March 2017. According to the complainants, the respondent had arbitrarily burdened the complainants under the head "cost escalation". According to the complainants they do not want to withdraw from the project. As per clause 2.11 of the FBA the respondent charges 18% p.a. compounded interest in case of delay in payment of instalments and offer the delay penalty for himself at just Rs. 5/- per sq. ft. per month which is totally illegal, arbitrary as per clause 3.3 of the FBA. The complainants have also raised the grievance with regard to levying of GST and demand of advance maintenance charges.

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

- (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 complainants 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 complainants at the same rate 18% which they charged from the complainants in case of delayed payments by the complainants?

(4) Whether the respondent is liable to pass the inputs credit to complainants which were the additional burden of GST imposed on the complainants due to inordinate delay in handing over of the possession?

(5) Whether the respondent at the time of possession imposed escalation cost, increased the super area without increasing the carpet area is unjustified, unacceptable, illegal and unilateral?

(6) Whether the flat buyer 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 the builder guise of a biased, arbitrary and one sided drafting of FBA with a malicious and fraudulent intention?

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- (7) Whether the respondent demanded advance maintenance charges from 13.02.2019 to 12.02.2020 unjustified, unacceptable, illegal and unilateral?
- (8) Whether the respondent demanded HVAT charges from complainants is justified, unacceptable, illegal and unilateral?
- (9) Whether the respondent collected more than 95% amount from complainants but not made expenses on particular project so the 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 possession without amenities and flat still not in habitable condition is justified, unacceptable, and arbitrary?
- (12) Whether the complainants taken extra burden of home loan EMIs due to delay in possession?"

5. The reliefs sought are detailed as under: -

- i. "Pass an order for delay interest on paid amount of Rs. 65,67,275 (Sixty Five Lakhs Sixty Seven Thousand Two Hundred And Seventy Five) from

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- April,2017 alongwith pendent lite and future interest till actual possession thereon @18%p.a.
- ii. Direct the respondent to quash the escalation cost.
 - iii. Direct the respondent to quash the increase in super area of flat as carpet area remain the same as previous.
 - iv. Direct the respondent to quash the VAT charges and to pay the same.
 - v. Direct the respondent to quash the demand for advance maintenance charges as of now.
 - vi. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by the builder.
 - vii. Direct the respondent to pay the delay penalty starting from April,2014 because builder executed the buyer's agreement after extracting 70% of total paid amount (which is in violation of section13(1) of RERA Act, 2016)."
6. Notice of the complaint has been issued to the respondent through speed post as well as on the email address provided to the Authority. Despite service of notice the respondent

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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.

7. 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: -

8. **All issues:** - As per the sufficient and unchallenged documentary evidence filed by the complainants 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 29.04.2014 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 due date 29.04.2017 plus 6 months' grace period. However, the offer of possession letter has been placed on

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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 one year in offering possession of the subject flat to the complainant. Hence, it is held that there was a delay of about one year 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.

9. 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 complainants had themselves been made to understand and had agreed that what had been offered to them 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

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annexure C attached with the agreement). Even otherwise increase in area from 1470 sq.ft. to 1520 sq.ft. is even below 5% which is within the reasonable limits.

5. As discussed above, the demand for additional charges due to the increased in super area without corresponding increase in the carpet area has been held to be perfectly justified. Therefore, the demand for additional charges cannot be struck down and is also not justified or arbitrary or is an act of unfair trade practice.

6. However, in the opinion of this Authority the complainant is entitled on a delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prescribed rate of interest of 10.45% per annum.

7. *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%. It is also less than 5% of the tentative allotted super area. As stated hereinabove what had been offered to the complainant vide agreement for sale dated 29.04.2014 (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 she 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 an increase in the carpet area to the increase in is perfectly justified.

8. 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.

9. Suffice 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 alongwith the enabling section.

Findings of the Authority: -

10. 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 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose 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:-

11. 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 due 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.
12. Escalation charges, if any, are reduced to 50%.

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13. The complaint stands disposed of accordingly.
14. The case file be consigned to the registry.

N. K. Goel *3-9-19*

(Former Additional District and Session 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

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.

[Signature]
24/9/19
Member (SCK)

[Signature]
(Samir Kumar)

Member

Registrar-cum-Administrative Officer (Petitions)

22/6/18

As per the orders dated 04.09.2019 of the Ld. Members para 11 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. 29.10.2017 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.

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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