

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

**Complaint no. : 423 of 2019**  
**Date of First hearing: 08.08.2019**  
**Date of decision : 03.09.2019**

1. Mr. Anil Rawat
2. Mrs. Vidhi Kansal

R/o.:201, Raghvendra Hills Apartment,  
Hillside Layout, Behind Four Points Hotel,  
Whitefield, Bengaluru, Karnatka-560066

**Complainants**

Versus

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

**Respondent**

**CORAM:**

**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/16<sup>th</sup> July 2019)  
under section 81, Real Estate (Regulation and Development) Act,  
2016

**APPEARANCE:**

Shri Kuldeep Kolhi along with Ms. Priyanka Agarwal

Advocate for the complainant  
alongwith authorised  
representative

Ms. Meena Hooda

Advocate for the respondent

*Kuldeep*  
*3-9-19*





**EXPARTE ORDER**

1. The present complaint relates to a flat buyer's agreement dated 07.12.2012 executed between the complainants and the respondent promoter, 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- 604, 6<sup>th</sup> floor, Tower T 1 of 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 totalling to Rs. 76,27,676/- and the complainants 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.	T1-604,6 <sup>th</sup> floor in tower T1.
5.	Measuring area of the allotted flat	1760 sq. ft.
6.	Measuring area as per offer of possession letter	1895 sq. ft.
7.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.
8.	Date of completion as per RERA registration certificate.	30.04.2018 (Tower T-76, 17 & 19 ) and 30.11.2018(Tower T-14, 15 &18)





9.	Date of allotment letter	17.12.2012 <b>(As alleged by complainant)</b>
10.	Date of execution of flat buyer agreement	07.12.2012 <b>(Annx P14)</b>
11.	Payment Plan	Construction linked payment plan <b>(Pg.69 of the complaint)</b>
12.	Basic sale price of the allotted unit	Rs. 62,74,400/- <b>(Pg. 46 of the complaint)</b>
13.	Total consideration	Rs. 76,27,676/- <b>(Pg.6 of the complaint)</b>
14.	Total amount paid by the complainants till date	Rs. 75,81,314/- <b>(as per Pg.6 of the complaint)</b>
15.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 07.12.2012	<b>07.06.2016</b> (Note - 36 months plus 180 days grace period from the date of execution of agreement)
16.	Date of offer of possession letter	17.10.2018 <b>(Annexure P1 at page 16 of complaint)</b>
17.	Delay in handing over possession	2 years 4 months 10 days (approx.)

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'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 which is not in habitable condition 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 1760 sq. ft. to 1895 sq. ft. According to the complainants, the respondent has forcibly imposed the escalation cost which is totally illegal, arbitrary, unjustified and unacceptable as per cost indexation of last 18 years. The question regarding GST, demand of Rs. 69,570/- towards VAT, advance maintenance charges of Rs. 80,500/- from 15.02.2019 to 14.02.2020 has also been raised though the complainants are made entitled to just Rs.5/- per month. It is submitted that since the respondent charges interest @18% the complainants are also entitled to the same rate of interest @18%.

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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. Hence, this complaint. In the application for amendment the complainants have stated that they do not intend to withdraw from the project.

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

1. Whether the respondent has breached the provision of the Act as well as the agreement by not completing the construction of the unit in time bound manner?
2. Whether the respondent has unjustly enriched them by misusing the hard earned money 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 pass 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 payment by the complainants?
4. Whether the respondent is liable to pass the input 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 super area without increasing carpet area is unjustified, unacceptable illegal and unilateral.

6. Whether 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 builder guise of a biased, arbitrary and one sided Drafting of FBA with a malicious and fraudulent intention.

7. Whether the respondent demanded advance maintenance charges from 15.2.2019 to 14.2.2020 unjustified, unacceptable illegal and unilateral.

8. Whether the respondent demanded HVAT charges from complainants unjustified, unacceptable illegal and unilateral.

9. Whether the Respondent collected the more than 95 % amount form complainants but not made expenses on particular project so project is delayed.

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

11. Whether respondent after long delayed offer the possession without amenities and flat still not in habitable condition is illegal and arbitrary.

5. The reliefs sought are detailed as under: -

- i. Pass an order for delay interest on paid amount of Rs. Rs.75,81,314/- from December 2015 alongwith pendete lite and future interest till actual possession thereon @ 18%.
- ii. Direct the respondent to quash the escalation cost, increase in the super area of the flat, VAT charges and demand of advance maintenance as of now and payment of GST amount.

6. Notice of the complaint has been issued to the respondent thrice 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 given time. Accordingly, the authority is left with no other

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option but to decide the complaint exparte 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: -**

5. **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 P/1), there is every reason to believe that vide the flat buyer's agreement dated 07.12.2012 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 07.06.2016. 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

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clearly shows that the respondent has caused delay of about 2 years 4 months 10 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 4 months 10 days in offering the possession of the subject flat to the complainant and this was in violation of the terms and conditions of the flat buyer's agreement and also violation of section 11(4)(a) of the Act.

6. 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 are entitled for delayed possession charges at the prevailing prescribed rate of interest of 10.45% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017.

7. From a perusal of clause 2.1 of the flat buyer's agreement, there is evidence on the record to show that the respondent had allotted an approximate super area of 1,760 sq. ft 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

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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 annexure C attached with the agreement).

8. As stated hereinabove, what had been offered to the complainant vide flat buyer's agreement dated 07.12.2012 (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 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. In the present case the increase in the super area is about 7.5% more which seems to be within reasonable limits. The counsel for the respondent has failed to cite judgment to the contrary till today after the conclusion of the final arguments. Above all, this is not the case of the complainants that they are not ready to accept the increased super area.

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Therefore, in the considered opinion of this Authority, the complainants are 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. Demands of VAT, GST, are as per the prevalent statutes and the terms and conditions of flat buyer's agreement. Advance maintenance charges for the period 15.02.2019 to 14.02.2020 (Rs. 80500/-) cannot be claimed and the same are quashed.

**Findings of the Authority: -**

9. 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:-**

10. 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.
11. The demand of advance maintenance charges amounting to Rs. 80500/- is quashed.
12. The complaint stands disposed of accordingly.
13. The case file be consigned to the registry.

*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/16<sup>th</sup>  
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

**(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.

*Member*  
04/9/19  
member (SCK)

4-9-19  
(Samir Kumar)

Member

Registrar-cum-Administrative Officer (Petitions)



423/19 ✓

As per the orders dated 04.09.2019 of the Ld. Members para 10 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. 07.06.2016 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*  
6-9-19

**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/16<sup>th</sup> July 2019)  
under section 81, Real Estate (Regulation and Development) Act, 2016.

Dated: 06.09.2019

Judgement uploaded on 10.09.2019