

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

**Complaint no.** : 58 of 2019  
**Date of first hearing** : 09.07.2019  
**Date of decision** : 12.09.2019

Mr. Harbir Singh Brar  
R/o 14, Eldorado Way, Monroe TWP,  
Monroe Township, NJ 08831-4510-08831,  
USA.

**Complainant**

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 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 U/s 81 of the Real Estate (Regulation and Development)  
Act, 2016]

**APPEARANCE:**

Shri Rahul Agarwal

Advocate for the complainant

Shri Siddhant Yadav

Authorized representative for  
the respondent company.

Ms. Sakshi Khatter

Advocate for the repondent



**EXPARTE ORDER**

1. The present complaint file on 04.01.2019 relates to a flat buyer's agreement dated 18.12.2012 executed between the complainant and the respondent promoter in respect of flat measuring 1760 sq. ft. super area bearing no. T1- 1201 (3BHK), 12<sup>th</sup> floor, Tower T 1 in the project, namely "Park Generations" situated in Sector 37 D, Gurugram (in short, the subject flat) for a total sale price of Rs. 76,27,676/- and the complainant opted for construction linked payment plan. Out of total consideration the complainant till date has paid a sum of Rs. 74,86,328.05/- in time bound manner. The project is registered with this Authority vide registration no. 7 of 2018 dated 03.01.2018.
2. The particulars of the complaint case 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.	T1-1201, 12 <sup>th</sup> floor in tower T1
5.	Measuring area of the allotted flat	1,760 sq. ft.
6.	Area as per offer of possession letter	1,813 sq. ft.
7.	RERA Registered/ Unregistered	Registered vide no. 7 of 2018.



8.	Date of completion as per RERA registration certificate.	30.4.2018 (Tower T-6, 17 & 19) and 30.11.2018(Tower T-14, 15 &18)
9.	Date of execution of flat buyer agreement	18.12.2012 (Annx P/4)
10.	Payment plan	Construction linked payment plan
11.	Total sale price of the allotted unit (as per clause 2.1 of flat buyer agreement)	Rs. 76,27,676/-
12.	Total amount paid by the complainant till date (as per statement of account dated 21.10.2016 attached on page 32 of complaint)	Rs. 74,86,328.05/-
13.	Due date of delivery of possession as per clause 3.1 of the agreement dated 18.12.2012 (Note - 36 months plus 180 days grace period from the date of execution of agreement)	18.06.2016
14.	Date of offer of possession letter	17.10.2018 (Annx P/1)
15.	Delay in handing over possession	More than 2 years and 3 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. The respondent issued offer of possession letter in respect of the subject flat on 17.10.2018.



4. As per the offer of possession letter the complainant has paid a sum of Rs. 75,85,381/- to the respondent till October 2018. The respondent offered the possession of the subject flat which is not in a 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 has been found to be unilaterally increased by the respondent from 1760 sq. ft. to 1813 sq. ft. which is unjustified and illegal without corresponding increase in the carpet area and causing cost escalation. It is stated that the maintenance charges amounting to Rs. 77,016/- have been demanded by the respondent which are payable as per the Haryana Apartment Ownership Act and the charges are to be paid monthly and hence asking for the maintenance charges in advance for 12 months without having given the possession and without registration of the flat is absolutely illegal. The complainant has also stated that the respondent has illegally raised demand towards VAT amounting to Rs. 69,053/- which demand is illegal and unjustified. In this regard para 14 of the complaint is material. The same reads as under:



"14. That as the delivery of the apartment was due on Decmeber2015 which was prior to the coming infor of force of GST Act,2016 i.e. 01.07.2017, it is submitted that the complainant is not liable to incur additional financial burden of GST due to the delay caused by the Respondent. Therefore the respondent should pay the GST on behalf of the complainant but just reversed builder collect the GST from complainant and enjoy the input credit as a bonus, this is also a matter of investigation Copy of Builder Statement Annexed Herewith as a P/2."

Paragraphs 12 and 13 are also relevant and read as follows:

"12. That respondent executed FBA is one sided at the time offer of possession builder used new tricks for extracted extra money from complainant forcibly imposed escalation cost of Rs. 6,50,377/- And wrongly justified it its understood when respondent booked the flat in 2011 and it will delivered by 2015 (as per agreement it will be delivered after 36 months from execution of FBA) and its understood inflation calculated at the time of booking if project is delayed by respondent, complainant are not responsible. When we see inflation index of past 18 years during this period rate of inflation is decreased so builder is liable to give discount in basic sale price rather than forcedly imposed escalation cost with unjustified reason. Basic sale price which was fixed at the time of

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*booking so demand of escalation cost is totally illegal, arbitrary, unjustified and unacceptable. Copy of Inflation Index of last 18 year issued by the CBDT, which shown inflation rate decreased in 2013 to 2016 as compare to past Data Annexed herewith as a P/6. Copy of Building Cost index issued by CPWD Annexed herewith as a P/7.*

*13. That respondent has to charge in delay installment @18% compounded interest as per clause no. 2.11 of FBA and offer the delay penalty for himself is just Rs. 5/- month is totally illegal, arbitrary. Copy of Flat Buyer's Agreement Annexed Herewith as P/4.*

5. Hence, this complaint.
6. In the application for amendment the complainant has stated that he does not wish to withdraw from the project.
7. 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 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 complainants at the same rate 18% which they charged from the complainants in case of delayed payment by the complainant?
4. Whether the respondent is liable to pass the input credit to the complainants which was 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 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 builder guise of a biased, arbitrary and one sided drafting of FBA with a malicious and fraudulent?
7. Whether the respondent demanded advance maintenance charges from 15.02.2019 to 14.02.2020 unjustified, unacceptable, illegal and unilateral?
8. Whether the respondent demanded HVAT charges from complainant unjustified, unacceptable, illegal and unilateral?
9. Whether the respondent collected more than 95% amount from complainant but not made expenses on particular project so project is delayed?

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

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

8. 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 handover the possession of unit in habitable condition with all amenities as mentioned in the brochure.
3. Restrain the respondent from raising an fresh demand and increasing the liability of the complainant.
4. Pass an order for delay interest on paid amount of Rs. 76,27,676/- from December, 2015 along with pendent lite and future interest till actual possession thereon @ 18%;
5. Direct the respondent to quash the escalation cost.
6. Direct the respondent to quash the increase in super area of flat as carpet area remains same as previous.
7. Direct the respondent to quash the VAT charges and to pay by own.
8. Direct the respondent to quash the demand of advance maintenance as of now and payment of GST amount.
9. Pass an order for payment of GST amount levied upon the complainant taken benefit of input credit by builder."





Notice of the complaint has been issued to the respondent by speed post and also on given email address at [sales@bptp.com](mailto:sales@bptp.com), [customercase@bptp.com](mailto:customercase@bptp.com) 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. Respondent has been proceeded *exparte* vide order dated 09.07.2019.

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

Arguments heard.

**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 P/4), there is every reason to believe that vide the flat buyer agreement dated 18.12.2012 the respondent had



agreed to handover the possession of the subject flat to the complainant within a period of 36 months from the date of execution of agreement 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 18.06.2016. 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 more than 2 years in offering possession of the subject flat to the complainant. Hence, it is held that there was a delay of more than 2 years 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 Real Estate (Regulation and Development) Act, 2016 since on the date of coming into force of the Act the project in question was not complete it must be held to be an "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder.



10. 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 prevalent prescribed rate of interest of 10.65% per annum as prescribed under section 18 (1)(b) proviso of the Act read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
11. 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 1,760 sq. ft (163.508 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 himself been made to understand and had agreed that what had been offered to him 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).
12. *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 5%. As stated hereinabove what had been offered to the complainant vide agreement dated 18.12.2012 (prior to the coming into force of the Act) was only a 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 which must be considered as "on going" project. 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.

13. Demand of VAT, GST ad maintenance charges is as per the prevalent statutes and the terms and conditions of flat buyer's agreement and if there is any extra payment made by the complainant under there heads the respondent shall adjust the same in future payment, if any, to be made by the complainants or shall refund the same to complainant forthwith.

14. Clause 7.5 of the FBA deals with the statutory taxes, maintenance charges and other dues. It inter alia provides for execution of a maintenance agreement in the standard format prescribed by the maintenance service provider and hence the allottee (s) to pay annual maintenance charges and such other charges as may be demanded by the maintenance service provider within 30 days of the offer of possession and to abide by the terms and conditions of the maintenance agreement. It seems that no such maintenance agreement has been



executed between the allottee (s) and any such maintenance provider in the project in question. Therefore the demand of the advance maintenance charges of 77,016/- from 15.02.2019 to 14.02.2020 is totally unjustified. The respondent shall, however, be entitled to demand the maintenance charges as per the Haryana Apartment Ownership Act, 1983 till the execution of the maintenance agreement. Hence, the demand of Rs. 77,016/- under this head is held to be illegal.

**Findings of the Authority: -**

15. 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 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.

16. 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.


**Decision and directions of the Authority:-**

17. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 and as prescribed in proviso to Section 18(1)(b) of the Act read with Rule 15 of the Rules hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.40% per annum with effect from the committed date of delivery of possession of the said flat bearing No. T1-1201, 12<sup>th</sup> floor in Tower T1, in "Park Generations", Sector 37D, Gurugram, Haryana i.e. 18.06.2016 till the date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order to the complainant.

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*14-9-19*



18. The Authority hereby declares that the demand of Rs.77,016/- by the respondent from the complainant towards advance maintenance charges for the period 15.02.2019 to 14.02.2020 is illegal and is quashed.
19. The complaint stands disposed of accordingly.
20. The case file be consigned to the registry.

  
**N. K. Goel** 17-9-19

(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/16<sup>th</sup> July 2019 U/s 81 of the Real Estate (Regulation and Development) Act, 2016]

Dated: 12.09.2019

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: 12.09.2019

Judgement uploaded on 20.09.2019