BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 921 of 2022
Date of filing complaint : 16.03.2022
First date of hearing : 27.05.2022
Date of decision : 03.11.2023

	Neetu Todi **R/O: -** Khasra no. 382, office no. 240, first floor, 100 foota road, Ghitorni, New Delhi-110030.	**Complainant**
	Versus	
1. 2.	M/s BPTP Limited M/s Countrywide Promoters Private Limited **Regd. Office at: -** M-11, Middle Circle, Connaught Circus, New Delhi-110001	**Respondents**

CORAM:	
Shri Sanjeev Kuma Arora	**Member**
APPEARANCE:	
Sh. Priyanka Aggarwal	Advocate for the complainant
Sh. Harshit Batra	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development)

Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1	Name of the project	'Spacio', Sector 37-D, Gurugram, Haryana.
2	Unit no.	M-901, 9th floor, tower-M (on page no. 23 of complaint)
3	Unit admeasuring	1225 sq. ft. (On page no. 23 of complaint)
4	Revised unit area	1303 sq.ft. (as per offer of possession on page no. 25 of complaint)
5	Date of booking	30.10.2010

		(Vide booking payment receipt on page no. 22 of complaint)
6	Date of execution of flat buyer's agreement	**Not executed**
7	Possession clause (Taken from the similar case of same project)	"**3. Possession** **3.1** Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/confirming party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. As prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, **the Seller/Confirming Party proposes to hand over the possession of the Flat to**

		the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the Authority. **(Emphasis supplied).**
8	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement	30.10.2013 (calculated from the date of booking)
9	Total sale consideration	Rs 60,27,386/- (on page no. 27 of the complaint)
10	Total amount paid by the complainant	Rs 31,17,336/- (on page no. 27 of the complaint)
11	Occupation certificate	15.01.2021 (on page no. 113 of reply)

12	Offer of possession	27.01.2021 (on page no. 115 of reply)
13	Termination Letter	15.03.2021 (on page no. 135 of reply)
14	Reminder Letters	24.09.2012, 09.04.2013, 13.05.2013, 25.06.2013, 25.07.2013, 26.08.2013, 25.09.2013, 18.04.2016, 17.02.2017, 22.06.2017, 11.12.2017, 24.08.2018
15	Grace period utilization	*In the present case, the promoters are seeking a grace period of 180 days for filing and pursuing of occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 15.01.2021 it is implied that the promoters applied for occupation certificate only on 21.01.2020 and 21.08.2020 which is later than 180 days from the due date of possession i.e., 30.10.2013. The clause clearly implies that the grace period is asked for filing and pursuing the occupation certificate, therefore as the promoters applied for the occupation certificate much later than the statutory period of 180 days, they do*

		not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 30.10.2013.

B. Facts of the complaint

3. That the complainant booked a flat admeasuring 1225 sq.ft in BPTP Spacio Sector- 37 D., Gurugram and paid booking amount of Rs. 320419.10/- through cheques no 274716, chq. dated 27.10.2010 and receipt no.2010/1400018910 dated 30.10.2010.

4. That the complainant was allotted the flat no. M-901, 09 floor, tower-M admeasuring 1225 Sq.ft in project "BPTP SPACIO" situated at Sector- 37D, Gurugram, dated 12.11.2010.

5. That the complainant approached builder a number of times for execution of flat buyer agreement, but the builder never responded and never executed BBA, which is illegal and arbitrary and violation of Section 13 of RERA Act.

6. That it is pertinent mentioned here that according to the statement the complainant paid a sum of Rs. 31,17,336/- to the respondents till date as per the payment schedule (more than 70% of total sale consideration paid by complainant) and paid amount is demanded by the respondents without doing appropriate work on the said project so after extracting 70% amount which is illegal and arbitrary and was liable to hand over the possession of a said unit before 30.10.2013 so

far from completion but builder offer the possession on dated 27.01.2021 but flat are not in habitable condition.

7. At the time offer of possession builder used new trick for extracted extra money from complainant forcibly imposed escalation cost of Rs766164/- and wrongly justified it. It is understood when respondents booked the flat in 2010 and which was to be delivered by 2013 and therefore it is understood inflation was calculated at the time of booking. if project is delayed by the respondent, complainant is not responsible.

8. That the respondents at the time of offer of possession forcibly imposed escalation cost Rs. 766164/- and increased the super area of flat 1225 sqft to 1303 sq ft. But carpet area remains same. Due to increase in super area payable amount was increased and it was created extra burden on complainant which has been objected by the complainant at the time of offer of possession. It is unjustified and illegal.

9. That the respondents had illegal and unjustified demand towards VAT of Rs 31220/- intimidation attempt to coerce and obtain an illegal and unfounded claim amount and also demanded 1 year advance maintenance charges amounting are payable as per the Haryana Apartment Owners Act and the charges are to be paid monthly hence asking for the maintenance charges in advance for 12 months, without having given the possession and without the Registration of the flat is absolutely illegal.

10. That respondents charges IFMS (Interest free maintenance security), this is security deposit and builder will get interest on amount but not passed the complainant is illegal, arbitrary and unilateral.

11. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondents, and trick of extract more and more money from complainant pocket seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondents conducted its business and their lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss.

C. Relief sought by the complainant.

12. The complainant has sought following relief:

(i) Direct the respondents to handover the physical possession of the unit along with prescribed rate of interest.

(ii) Direct the respondents to quash the escalation cost of RS. 766164/-.

(iii) Direct the respondents to quash one year advance maintenance charges of Rs. 71871/-

(iv) Direct the respondents to quash the increase in super area of flat as carpet area remain same as previous.

(v) Direct the respondents to quash the VAT charges.

(vi) Direct the respondents to pay interest on maintenance security (IFMS).

(vii) Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

D. Reply by the respondents.

13. It is submitted that the complainant has approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

14. That The complainant has also concealed in its complaint that the respondents offered additional benefits in the form of timely payment discount ("TPD") to the customers including the complainant, thereby reducing the cost of the flat. The total amount of TPD provided to the Complainant is Rs. 57,172/-

15. It has been suppressed by the complainant that the respondents regularly issued construction updates to the complainant. That the bona fides of the complainant **is** established from the fact that the respondents from time to time has been updating its customers

including the complainant with respect to the progress being made in the project, same is evident from emails wherein, the respondents explicitly elaborated to the complainant about the works that are already complete with recent snaps.

16. That it is submitted that the complainant has falsely alleged that the respondents had made false promises in completing the project and handing over the possession. It is submitted that the respondents has invested more funds in the project as a whole than collected from the customers and has duly offered the possession of the unit on 27.01.2021

17. It is further submitted that having agreed to the above, at the stage of entering into the FBA, and raising vague allegations and seeking baseless reliefs beyond the ambit of the FBA, the complainant is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate'. In this regard, the respondents reserves their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.

18. All other averments made in the complaint were denied in toto.

19. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes

that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

E. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> ***Section 11(4)(a)***
>
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.*

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant.

(i) Direct the respondents to handover the physical possession of the unit along with prescribed rate of interest.

(ii) Direct the respondents to quash the escalation cost of RS. 766164/-.

(iii) Direct the respondents to quash one-year advance maintenance charges of Rs. 71,871/-

(iv) Direct the respondents to quash the increase in super area of flat as carpet area remain same as previous.

(v) Direct the respondents to quash the VAT charges.

(vi) Direct the respondents to pay interest on maintenance security (IFMS).

(vii) Pass an order for payment of GST amount levied upon the complainant and taken the benefit of input credit by builder.

20. The above-mentioned reliefs are being taken together as the validity of termination is to be ascertained first.

21. The complainant was allotted unit no M-901, Ground floor in tower M in the project "Spacio" by the respondents for a total consideration of Rs. 60,27,386/- and he paid a sum of Rs. 31,17,336 which is approx. 51% of the total sale consideration. The respondents had sent reminder letter dated 24.09.2012, 09.04.2013, 13.05.2013, 25.06.2013, 25.07.2013, 26.08.2013, 25.09.2013, 18.04.2016, 17.02.2017, 22.06.2017, 11.12.2017, 24.08.2018 to make payment of the outstanding amount. The complainant continued with their default and again failed to make payment even after receipt of final reminder letter.

22. It is pertinent to mention here that the respondents offered possession of the subject unit to the complainant on 27.01.2021 along with request to clear the outstanding amount of Rs. 28,89,775/- on or before 26.02.2021. The complainant failed to clear the outstanding dues and therefore the respondents terminated the unit of the complainant on account of non-payment and issued termination letter dated 25.03.2021. But there is nothing on record which shows that respondents have refunded the amount paid by the complainant.

23. Vide proceeding dated 11.08.2023, the counsel for the respondents stated that demand request was raised on various occasions and finally a termination intimation was sent on 15.03.2021 and the unit was offered on 27.01.2021 and after that due to non-payment it was finally terminated on 15.03.2021, hence, the termination should be treated as valid as being done after so many reminders for making the payment. The counsel for the complainant further stated that oral settlement between the complainant and respondents had arrived at and a sum of Rs.9,50,100/- was received by the respondents on 28.04.2022 as per statement of bank account of the complainant on the contrary the counsel for the respondents stated that there was no such settlement arrived at between the parties and once the unit was terminated on 15.3.2021.

24. Subsequently, vide dated 18.10.2023 written submissions have been filed by the counsel of complainant through which she has stated that after termination of the unit, the respondent was given the assurance of physical possession of the unit and on the basis of assurance she again has paid an amount of Rs. 9,50,100/- against the mentioned unit

as a final settled amount on 28.04.2022. She further states that the amount has been paid and the statement of account has been affixed on this ground the termination should be termed as invalid.

25. After considering the available documents on record, the authority is of the view that although an amount of Rs. 9,50,100/- has been paid by her as an alleged final settlement but no such official demand letter/official receipt from respondents has been placed on record through which she had paid the same or which can be relied upon to ascertain the alleged demand. So, for all practical purposes, it cannot be denied that the respondents treated the alleged termination as a document to be acted upon. Thus, the termination of the subject unit is hereby upheld.

26. It is observed that the respondents have raised various demand letters to the complainant and as per section 19 (6) & (7) of Act of 2016, the allottees were under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. When sufficient time and opportunities have been given to the complainant to make a payment towards consideration of allotted unit, it would be violation of section 19 (6) & (7) of Act of 2016. As per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondents has to return the remaining amount after deducting 10% of total sale consideration as earnest money, along with interest @10.75% (MCLR+2%) from the date of cancellation till its realization. The authority observes that the complainant is not entitled physical possession of the unit or delay possession charges as their own default, the unit has been cancelled

by the respondents after issuing proper reminders. Therefore, the termination of the allotted unit by the respondents is valid. However, the respondents have contravened the provision of sec 11(5), sec 13 of the Act and illegally held the monies of the complainant. Therefore, the respondents are directed to return the paid-up amount after deducting 10% being earnest money of the total sale consideration as per allotment letter, along with interest @10.75% (MCLR+2%) from the date of cancellation till its realization.

27. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoter and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022 observed as under:

> *25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*

28. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate

of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

29. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 03.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such, the complainant is entitled to refund the entire amount paid by him at the prescribed rate of interest i.e., @ 10.75% p.a. from the date of payment of each sum till its actual realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

H. Directions of the authority

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

I. The respondents are directed to refund the paid-up amount after deducting 10% of the sale consideration of the unit being earnest money along with an interest @ 10.75% p.a. on the refundable amount from the date of cancellation i.e., 15.03.2021 till the actual date of refund of that amount.

II. The respondents are also directed to refund Rs. 9,50,100/- along with an interest @ 10.75% p.a. as received by them on 24.08.2022 from complainant.

III. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

32. Complaint stands disposed of.

33. File be consigned to registry.

Sanjeev Kumar Arora
(Member)
Haryana Real Estate Regulatory Authority,
Gurugram
Dated: 03.11.2023