

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

Complaint no. : 2201 of 2018
First date of hearing: 04.04.2019
Date of decision : 29.08.2019

Mr. Satbir Singh
R/o: The Best PG, Room no:B1, Plot no.1,
Krishna Market, Saraswati Vihar,
Chakarpur, M.G.Road, Gurugram: 122002,
Haryana.

Complainant

Versus

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

Respondent

CORAM:
Shri Samir Kumar
Shri Subhash Chander Kush

Member
Member

APPEARANCE:

Ms. Priyanka Aggarwal Advocate for the complainant
Ms. Sakshi Khatter AR and
Ms. Meena Hooda Advocate for the respondent

ORDER

1. A complaint dated 18.12.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 by the complainant Mr. Satbir Singh against the promoter BPTP Ltd. on account of violation of clause 3.1 of flat buyer's agreement executed on 01.04.2013 in respect of the unit described below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

2. Since the flat buyer's agreement was executed on 01.04.2013 i.e. prior to the commencement of the Real Estate (Regulation and Development) Act, 2016, so the penal proceedings cannot be initiated retrospectively. Therefore, the authority has decided to treat this complaint as an application for non-compliance of statutory obligation on the part of the respondent in terms of the provision of section 34(f) of the Act *ibid*.

3. The particulars of the complaint are as under: -

1.	Name and location of the project	"Park Generations", Sector 37-D, Gurugram
2.	Nature of real estate project	Group housing colony
3.	DTCP license no.	83 of 2008 and 94 of 2011



4.	Unit no.	T3-1902, 19 th floor, tower T3
5.	Unit area	1470 sq. ft
6.	RERA registration status	Unregistered
7.	Date of allotment letter	17.12.2012
8.	Date of flat buyer's agreement	01.04.2013
9.	Payment Plan	Construction linked payment plan
10.	Total consideration (excluding taxes) amount as per statement of account dated 20.03.2013 attached on page 84 of complaint	Rs. 66,28,410/-
11.	Total amount paid by the complainant as alleged by the complainant	Rs. 67,69,873/-
12.	Offer of possession (page 15 of complaint)	17.10.2018
13.	Occupation certificate received on (as mentioned in offer of possession attached on page 15 of complaint)	09.10.2018
14.	Due date of delivery (as per clause 3.1 : 36 months + 180 days grace period from the date of execution of flat buyer's agreement)	01.10.2016
15.	Delay in handing over possession till offer of possession i.e. 17.10.2018	2 years 16 days

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4. The details provided above have been checked as per record available in the case file which has been provided by the complainants. The flat buyer's agreement dated 01.04.2013 is

available on record for the aforesaid unit. As per clause 3.1 of the flat buyer's agreement, the due date of handing over possession was 01.10.2016. The respondent has not paid any interest for the period it delayed in handing over the possession. Therefore the promoter has not fulfilled its committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly the parties appeared on 04.04.2019, 14.05.2019, 07.08.2019 and 29.08.2019. The reply filed on behalf of the respondent has been perused.

FACTS OF THE COMPLAINT:

6. The complainant submitted that the complainant approached the respondent for booking a flat admeasuring 1,470 sq. ft. in BPTP Park Generations, sector 37D, Gurugram and paid a booking amount of Rs. 5,00,000/- dated 11.08.2011.
7. The complainant submitted that the complainant allotted first come first serve basis the flat T3-1902 admeasuring 1470 sq. ft., 3 BHK in BPTP Park Generations, Sector-37D, Gurugram,

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dated 17.12.2012. It is top floor and complainant out rightly denied to taken this flat but builder allotted him forcibly.

8. The complainant submitted that the respondent in order to dupe the complainant even executed a buyer's agreement and it was signed between the complainant and respondent on 15.03.2013. This was done just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement the respondent persistently raised demands due to which the respondent was able to extract huge amount of money from the complainant.
9. The complainant submitted that the respondent executed the buyer's agreement after 2 years from the date of booking and extracted more than 30% of amount of total sale consideration is illegal and arbitrary.
10. The complainant submitted that the total cost of the said flat is Rs. 66,28,410/- (excluding taxes). Out of this a sum of Rs. 67,69,873/- was paid by the complainants in a time bound manner. According to the statement the complainants paid a sum of Rs. 67,69,873/- to the respondent till March 2017, and only last instalment is remain as per the statement and paid



amount is demanded by the respondent without doing appropriate work on the said project, which is illegal and arbitrary.

11. The complainant submitted that the respondent was liable to hand over the possession of the said unit before 15.03.2016. The respondent offered possession on 17.10.2018 but the flat is not in a habitable condition.
12. The complainant submitted that the respondent executed flat buyer's agreement is one sided at the time of offer of possession builder used new trick for extracted extra money from complainant forcibly imposed escalation cost of Rs.5,82,936/- and wrongly justified it understood when respondent booked the flat in 2011 and it will delivered by 2016 and its understood inflation calculated at the time of booking if project is delayed by respondent, complainant are not responsible.
13. The complainant submitted that as the delivery of the apartment was due on March 2016 which was prior to the coming into of force of the GST Act,2016 i.e. 01.07.2017 and the complainant is not liable to incur additional financial burden



of GST due to the delay caused by the respondent as the builder collect the GST from complainant and enjoy the input credit as a bonus.

14. The complainant submitted that the respondent at the time of offer of possession forcibly imposed escalation cost and increased the super area of flat 1470 sq. ft. to 1833 sq. ft. the respondent also imposed charges of Rs 37,07,760/- for private terrace which was objected by the complainant at the time of allotment.
15. The complainant submitted that the snail paced work at the construction site and half-hearted promises of the respondent, and the trick of extract more and more money from the complainant pocket seems bleak and the same is evident of the irresponsible and desultory attitude and conduct of the respondent.
16. The complainant submitted that the complainant submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this authority. Hence, the complainant has filed the present complaint.

ISSUES RAISED BY THE COMPLAINANTS :

17 . The following issues are raised by the complainant:

- i. Whether the respondent has violated the terms and conditions of the flat buyer's agreement thereby delaying possession?
- ii. 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?
- iii. Whether the respondent is liable to pass the input credit to complainant which was the additional burden of GST imposed on the complainants due to inordinate delay in handing over the possession?
- iv. Whether the respondent at the time of possession imposed the escalation cost, increased super area without increasing carpet area is illegal?
- v. Whether the complainant objected top floor unit at the time of allotment, still builder imposed cost of

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Rs. 37,07,760/- charged for private terrace legal is unjustified?

RELIEF SOUGHT:

16. In view of the above, complainant seeks the following relief :

- (i) Pass an appropriate award directing the respondent to pay interest on paid amount of Rs. 67,69,873/- from March 2016, along with pendent lite and future interest till actual possession thereon @18%.
- (ii) To direct the respondent to quash the escalation cost and charges of private terrace.
- (iii) To direct the respondent to quash the increased in super area of flat as carpet area remain same as previous.
- (iv) Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.

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REPLY BY THE RESPONDENT:

17. The respondent submitted that the respondent had diligently applied for registration of the project in question i.e. "Park Generations" located at Sector-37D, Gurugram before this hon'ble authority and accordingly, registration certificate dated 03.01.2018 was issued by this hon'ble authority wherein the registration for the said project is valid for a period commencing from 30.04.2018.

18. The respondent submitted that the complainant has approached this hon'ble authority for redressal of his alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, 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 decisions 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 respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. In this regard, reference may be made to the following instances which establish concealment/suppression/misrepresentation on the part of the complainant:

- i. The respondent submitted that the complainant approached the respondent through a broker, namely 'Chanakya Estates' after conducting due diligence of the relevant real estate geographical market and after ascertaining the financial viability of the same. It is further submitted that complainant is an investor and has booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainant has filed the present purported complaint to wriggle out of the agreement.



- ii. The respondent has till date granted Rs. 1,77,600.33/- towards additional incentive in the form of the Timely Payment Discount to the complainant.
- iii. The respondent submitted that the complainant has also not disclosed before this Hon'ble Authority that complainant committed defaults in making timely payment of instalments. The demand raised vide letter dated 02.07.2013 was not paid within the stipulated time, the complainant failed and neglected to clear outstanding dues in terms of letter dated 02.07.2013, the respondent sent various reminder letters, however the complainant failed to clear the outstanding dues. After the final opportunity letter dated 21.10.2013 for clearing the dues along with a termination letter dated 21.11.2013 was issued to the complainant. After clearance of dues on 02.01.2014, the respondent restored the unit in question.
- iv. The respondent submitted that the complainant in the entire complaint concealed the fact that no updates regarding the status of the project were provided to him



by the respondent. However, complainant was constantly provided construction updates by the respondent vide emails dated 21.12.2016, 24.05.2017, 23.06.2017, 28.07.2017, 11.12.2017, 09.04.2018, 08.05.2018 and 15.06.2018.

- v. The respondent submitted that the sole intention of the complainant is to unjustly enrich himself at the expense of the respondent by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

19. The respondent submitted that the relief(s) sought by the complainant are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. It is further submitted that the complainant entered into the said agreement with the respondent with open eyes and is bound by the

same. It is further submitted that the relief(s) sought by the complainant travel way beyond the four walls of the agreement duly executed between the parties. It is further submitted that the complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement, including clause-3.3 which provides for delayed penalty in case of delay in delivery of possession of the said floor by the respondent. It is further submitted that the detailed relief claimed by the complainant goes beyond the jurisdiction of this hon'ble authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainant.

20. The respondent submitted that the above submission implies that while entering into the agreement, the complainant had the knowledge that there may arise a situation whereby the possession could not be granted to the complainant as per the commitment period and in order to protect and/or safeguard the interest of the



complainant, the respondent have provided reasonable remedy under clause-3.3, and, the complainant having accepted to the same in totality, cannot claim anything beyond what has been reduced to in writing between the parties. In this regard, reference may be made to section-74 of the Indian Contracts Act, 1872, which clearly spells out the law regarding sanctity and binding nature of the ascertained amount of compensation provided in the agreement and further specifies that any party is not entitled to anything beyond the same. Therefore, the complainant, if at all, is only entitled to compensation under clause-3 of the agreement.

21. The respondent submitted that having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, 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 respondent reserve their right to refer to and rely

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upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.

Therefore, in light of the settled law, the reliefs sought by the complainant in the complaint under reply cannot be granted by this hon'ble authority.

22. The respondent submitted that the complainant duly executed flat buyer's agreement on 01.04.2013 wherein the complainant agreed that subject to force majeure, the possession of the flat to the complainant will be handed over within 36 months from the date of the execution of the flat buyer's agreement along with a further grace period of 180 days. The remedy in case of delay in offering possession of the unit was also agreed to between the parties as also extension of time for offering possession of the floors.

23. The respondent submitted that the project "park generations" has been marred with serious defaults in timely payment of instalments by majority of customers, due to which, on the one hand, the respondent had to

encourage additional incentives like TPD while on the other hand, delays in payment caused major setback to the development works. Hence, the proposed timelines for possession stood diluted.

24. The respondent submitted that the possession of the unit in question has been delayed on account of reasons beyond the control of the respondent. It is submitted that the construction was affected on account of the NGT order prohibiting construction activity of any kind in the entire NCR by any person, private or government authority.

25. The respondent submitted that the construction of tower 1,2 and 3 has been completed and the occupancy certificate has been granted on 09.10.2018 and the same was duly informed to the complainant vide email dated 13.10.2018, thereafter the respondent sent offer of possession dated 17.10.2018, however the complainant, being an investor does not wish to take possession as the real estate market is down and there are no sales in

secondary market, thus has initiated the present frivolous litigation.

DETERMINATION OF ISSUES:

26. After considering the facts submitted by the complainants and perusal of record on file, the issue wise findings are as hereunder:

- i. With respect to **first and second issue** raised by the complainants as per clause 3.1 of the flat buyer's agreement dated 01.04.2013, the possession of the unit was to be handed over within 36 months plus grace period of 180 days from the date of execution of flat buyer's agreement. In the present case, the flat buyer's agreement was executed on 01.04.2013. Therefore, the due date of handing over the possession shall be computed from 01.04.2013. Grace period of 180 days has been allowed to the respondent for the delay caused due to exigencies beyond control of respondent.

Accordingly, the due date of possession was 01.10.2016 and hence, the period of delay in delivery of possession is

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computed as 2 years 16 days till the date of offer of possession i.e. 17.10.2018. The delay compensation payable by the respondent @ Rs.5/- per sq. ft. per month of super area for any delay in offering possession of the unit as per clause 3.4 of flat buyer's agreement is held to be unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided. It has also been observed in para 181 of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements."

As the possession of the apartment was to be delivered by 01.10.2016, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016. As the promoter has failed to



fulfil his obligation under section 11(4)(a), the promoter is liable under section 18(1) proviso read with rule 15 of the Rules ibid to pay interest to the complainant, at the prescribed rate, for every month of delay from due date of possession i.e. 01.10.2016 till the date of offer of possession dated 17.10.2018.

- ii. With respect to **third issue** raised by the complaint, the authority is of the view that the present issue does not fall within its jurisdiction. The complainant is advised to approach appropriate forum regarding the same. Thus this issue is decided in negative.
- iii. With respect to the **fourth and fifth issues** raised by the complainant, that Increase in additional terrace area and additional demand of Rs.3,70,760/- and increase in super area from 1470 sq. ft. to 1833 sq. ft. which comes out to be 25% alongwith an escalation cost of 5,82,936/-.The authority is of the view that the terrace area is a part of common area as per details submitted by the promoter at the time of obtaining OC in the office of DTCP Haryana. As such the respondent cannot charge



any amount on this count. Further, as per clause 1.7 of the model agreement for sale (Annexure A) of the Haryana Real Estate (Regulation and Development) Rules, 2017, there cannot be a change of more than 5% (+/-) in the carpet area of the apartment. In the present case, the area increase is less than 5%. The rates calculated by the respondent are not commensurate with CPWD and price index and escalation too are not reasonable. The respondent is directed to rectify the demand and send fresh demand letter to the complainant.

FINDINGS OF THE AUTHORITY

27. 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.





Arguments heard.

The brief facts leading to this complaint are that as per clause 3.1 of the Builder Buyer Agreement dated 01.04.2013 for unit No. T3-1902, Tower T3 in project "Park Generations" Sector 37-D, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the date of execution of the agreement i.e. 01.04.2013 + 6 months grace period which comes out to be 01.10.2016. It has been stated at bar that the OC of the unit has been received on 09.10.2018, copy of which is annexed and placed on record and offer of possession has been sent to the complainant on 17.10.2018. Keeping in view the sequence of events, the delivery of possession of unit is late by 2 years 16 days. Complainant has already paid Rs.67,69,873/- to the respondent against a total sale consideration of Rs.66,28,410/-. As such, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 01.10.2016 to 17.10.2018 as per the provisions of



section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

Besides this, certain issues have been raised by the complainant which are as below:-

- i) Increase in additional terrace area and additional demand of Rs.3,70,760/- and increase in super area from 1470 sq ft to 1833 sq ft which comes out to be 25%.
- ii) An escalation cost of 5,82,936/- keeping in view the CPWD rate index.

It has been alleged by the complainant that all these demands are over and above as mentioned in the flat buyer's agreement.

Authority is of the considered view that so far as demand no.1 is concerned, the terrace area is a part of common area as per details submitted by the promoter at the time of obtaining OC in the office of DTCP Haryana. As such the respondent cannot charge any amount on this count. (ii) so far as super area is concerned that should be not more

than 5% of the carpet area. The respondent is directed to rectify the demand and send fresh demand letter to the complainant. The rates calculated by the respondent are not commensurate with CPWD and price index and escalation too are not reasonable and does not hold water in the eyes of law. As such, the same is scuttled.

DECISION AND DIRECTIONS OF THE AUTHORITY:

28. After taking into consideration all the material facts produced by the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions in the interest of justice: -

i. The respondent is directed to pay delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f. 01.10.2016 to 17.10.2018 as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

- iii. Complainant is directed to pay outstanding dues, if any, after adjustment of interest awarded for the delayed period.
- iv. The promoter shall not charge anything from the complainant which is not a part of the flat buyer's agreement.
- v. The respondent is directed to rectify the demand and send fresh demand letter to the complainant.
- vi. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.45% by the promoter which is the same as is being granted to the complainant in case of delayed possession.
29. The order is pronounced.
30. Case file be consigned to the registry.
- (Samir Kumar)
Member
- (Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated : 29.08.2019

Judgement uploaded on 11.09.2019

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