

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

**Complaint no. : 2487 of 2018**  
**Date of First hearing: 06.08.2019**  
**Date of decision : 06.09.2019**

Mr. Amit Sharma

R/o.:1033 A, Sector 1, Rohtak, Haryana,  
124001.

**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/16<sup>th</sup> July 2019)

under section 81, Real Estate (Regulation and Development) Act,  
2016

**APPEARANCE:**

Ms. Priyanka Agarwal

Ms. Siddhant Yadav

Advocate for the complainant

Authorized representative for

the ex-parte respondent

company

**EXPARTE ORDER**

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1. The present complaint filed on 02.01.2019 relates to a flat buyer's agreement dated 24.01.2013 executed between the complainant and the respondent promoter, in respect of flat measuring 1470 sq. ft. super area bearing no. T4- 0403, 4<sup>th</sup> Floor, Tower T 4 in the project, namely, "Park Generations" situated in Sector 37 D, Gurugram, (in short, the subject flat) for a total sale price of Rs. 65,52,852/- excluding taxes out of which the complainant has paid Rs. 65,83,410/- to the respondent. The complainant opted for construction linked payment plan. Project is registered with this Authority vide registration no. **7 of 2018** dated **03.01.2018**
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.	DS-08/4395
3.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.
4.	Flat/unit no.	T4-403, 4 <sup>th</sup> floor, T4 Tower.
5.	Area of the allotted flat	1470 sq. ft.
6.	Date of execution of flat buyer agreement	24.01.2013
7.	Payment Plan	Construction linked payment plan
8.	Total consideration	Rs. 65,52,852/- excluding taxes.



9.	Total amount paid by the complainant till date	Rs. 65,83,410/-
10.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 24.01.2013	24.07.2016 (Note - 36 months plus 180 days' grace period from the date of execution of agreement)
11.	Period of delay	Continuing

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. According to the complainant since the respondent has failed to hand over the possession of the subject flat to him, the respondent is liable to pay the delay possession interest @ 18 per cent per annum which the respondent charges on delay payments from the allottees.

The complainant does not want to withdraw from the project. Hence, this complaint.

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4. Several issues have been raised to be decided by the Authority. However the relevant question is as follows :-

Whether the respondent is liable to pay delay possession interest to the complainant? If so, for what period and at what rate of interest?

5. The relevant relief sought is as under :-

- i. To pass an order for delay interest on paid amount of Rs. Rs. 65,83,410/- w.e.f. 24.01.2016 till the date of handing over of possession.

6. Notice of the complaint has been issued to the respondent thrice and the delivery reports have been placed in the file. Respondent was given opportunities to file the reply subject to cost of Rs. 10,000 and also Rs. 5,000 but the respondent did not give any response within the stipulated period 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. In notice for today respondent has been shown exparte.

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. 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/1), there is every reason to believe that vide the flat buyer's agreement dated 24.01.2013 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 24.07.2016. However, the respondent has not offered the possession of the subject flat to the complainant till date. The project is question was not complete on the date of coming into force of the Real Estate (Regulation & Development) Act, 2016. (in short, the Act) Hence, it must be held to be "ongoing project" and thus covered under the provisions of the Act and the Rules framed thereunder. This act of not offering the

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possession of the subject flat to the complainant is in violation of the terms and conditions of the flat buyer's agreement and also violation of section 11(4)(a) of the Act.

9. Therefore, in the opinion of this Authority the complainant is entitled to interest on delayed possession as prescribed under the proviso to Section 18(1)(b) of the Act read with Rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017. Accordingly, it is held that the complainant is entitled for delayed possession charges at the prevailing prescribed rate of interest of 10.40% per annum as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with proviso to Section 18(1)(b) of the Act.

**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 14.12.2018 issued by Town and Country Planning

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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:-**

11. 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 Haryana Real Estate (Regulation & Development) Rules, 2017 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 i.e. 24.07.2016 till date within a period of 90 days from this order and to continue to pay the same at the same rate by 10th day of each succeeding English calander month till the date of offer of possession.

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12. The complaint stands disposed of accordingly.

13. The case file be consigned to the registry.

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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

Order ratified by the Authority as above.

*[Signature]*  
**(Samir Kumar)**

Member

*[Signature]*  
**(Subhash Chander Kush)**

Member

**(Dr. K.K. Khandelwal)**

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.09.2019

Judgement uploaded on 13.09.2019