

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

Complaint no. : 853 of 2021  
Date of first hearing: 06.04.2021  
Date of decision : 15.03.2024

1. Shweta Saxena 2. Ashish Kumar R/o - B-71, First Floor, BPTP Astaire Garden, Sector-70A, Gurgaon	<b>Complainants</b>
Versus	
M/s BPTP Ltd. Office: - M-11, Middle Circle, Connaught Circus, New Delhi-110001	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Priyanka Aggarwal	Complainants
Shri Harshit Batra	Respondent

**ORDER**

1. The present complaint dated 17.02.2021 has been filed by the complainants/allottees 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 complainants, 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	'Astaire Gardens', Sector 70A, Gurugram, Haryana.
2.	Nature of the project	Residential Plotted Colony
3.	Project area	102.2 acres
4.	Rera Registered/Not Registered	Registered Vide 55 of 2021 dated 21.09.2021 upto 31.08.2026
5.	DTCP License No.	15 of 2011 Dated 07.03.2011 valid upto 06.03.2024 62 of 2021 dated 01.09.2021 valid upto 31.08.2026
6.	Independent Residential Floor/ Unit no.	B-71-FF, First Floor, (page no. 116 of complaint)
7.	Unit admeasuring	1390 sq. ft. (page no. 116 of complaint)
8.	Date of sanction of building plan	15.05.2013 (vide documents submitted by the respondent to BPTP Committee)



9.	Allotment letter	18.10.2011 (Page no. 104 of complaint)
10.	Date of execution of floor buyer's agreement	01.02.2012 (page no. 110 of the complaint)
11.	Possession clause	<p><b>5. Possession</b></p> <p><i>"Clause 5.1- Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the</i></p>

		<i>expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.</i>
12.	Grace period utilization	<i>In the present case, the promoter is seeking a grace period of 180 days for finishing work and filing and pursuing the occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 19.09.2017, the promoter did not apply for the OC within the stipulated time. The clause clearly implies that the grace period is asked for filing and pursuing occupation certificate, therefore as the promoter applied for the occupation certificate much later than the statutory period of 180 days, he does 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 15.05.2016.</i>
13.	Due date of delivery of possession	15.05.2016 (calculated from the date of sanction of building plan being later)
14.	Basic sale consideration	Rs. 74,57,367/- after deduction of BSP discount
15.	Total sale consideration	Rs. 96,40,065/-

		(annexure R-6 on page no. 116 of reply)
16.	Total amount paid by the complainants	Rs. 75,78,991/- (annexure R-6 on page no. 116 of reply)
17.	Occupation certificate	19.09.2017 (annexure R-5 on page no. 113 of reply)
18.	Offer of possession	26.09.2017 (annexure R-6 on page no. 114 of reply)
19.	Possession handed over on	24.03.2018 (as admitted by both parties)
20.	Conveyance Deed	29.05.2019 (annexure R-10 on page no. 145 of reply)

### B. Facts of the complaint

3. That in the year 2011, complainants believing the assurances of respondent paid an initial amount of Rs. 7,00,000/-. Accordingly, the complainants were allotted one floor bearing unit no. B-71-FF in the above said project.
4. That the respondent issued a provisional allotment letter dated 18.10.2011 allotting a floor bearing unit no. B-71-FF admeasuring 1390 sq. ft. in the aforesaid project of the developer for a total sale consideration of Rs. 84,05,008/- including basic price of Rs. 74,57,367/- after the discount of Rs. 2,30,640/-.



5. That the complainants having dreams of their own residential floor/villa were forced to signed the FBA on 01.02.2012 as they had already paid Rs. 14,91,632/-. The signing of the FBA was deliberately delayed and further, the FBA vide clause 5.1 had extended the time period of possession to 36 months plus grace period of 6 months from 30 months plus grace period of 6 months (vide clause 24 of the Application for Provisional Allotment). However, in the hope that they shall be delivered the floor within 36 months plus 6 months grace period.
6. That the respondent on 20.05.2015 sent an email to the complainants providing construction and financial update about the project and committing dates of May 2016 for handing over of unit.
7. That the respondent on 03.03.2016 sent an email to the complainants committing the delivery of the phase 1, i.e, Block B by September 2016 and mentioned that in case of delay beyond the time frame mentioned for giving possession, the company is liable to pay a penalty for the entire period of such delay as the clauses 1.10 and 5.1.
8. That the complainants on 04.04.2016 followed up with the respondent bringing to the notice of the respondent that it is difficult for the complainants to manage their finances owing to the difficulties brought upon them due to the delay in the construction of the project as a result of non-payment of dues of the contractors by the respondent.
9. That the complainants also pointed out deficiency in services and incomplete handover of complex without any Community center, STP unit, and regular power connection from DHVBN. The complainants contacted the respondent regularly through multiple telephonic conversations to inquire about the status of the construction and project, as to when the possession will be delivered and reasons for the slow pace of construction. However, the respondent was never able to give any satisfactory response

to the complainants regarding the status of the construction and was never definite about the delivery of the possession. Moreover, the respondent kept posting wrong or old images about the construction updates on their website and thus, misrepresenting the facts.

10. That the respondent on 14.03.2017 sent an email to the complainants stating that the builder was ready to offer possession in April 2017 for Block B.
11. That the respondent on 20.03.2017 sent a letter to the complainants with a demand to pay Rs. 70,553.72 under VAT amnesty scheme per notification no. 19/ST1/H.A.6/2003/S59A/2016 dated September 12, 2016.
12. That the occupation certification for monet floors, astaire garden was received by the respondent and the same was informed to the complainants vide email dated 27.09.2018.
13. That on 26.09.2017, respondent sent a letter for offer of possession for unit No. B-71-FF with demand of Rs. 18,38,674/- wherein a demand for the basic sale price of Rs 77,50,506/- EDC & IDC charges of Rs. 3,67,001/-, club membership charges of Rs. 2,00,000/-, electrification & STP charges of Rs. 1,61,224/-, power backup installation charges of Rs. 1,50,000/-, Cost escalation charges of Rs. 4,79,335/-, service tax of Rs. 2,23,239/-, VAT of Rs. 70,553/-, GST of Rs. 2,38,204/- were also raised.
14. That on offer of possession cum demand letter dated 26.09.2017, the complainants visited the unit and were shocked to note that the floor offered for possession was not ready for human inhabitation and even the offer of possession was made without completion of entire sanitation work.
15. That in the offer of possession cum demand letter dated 26.09.2017, the respondent escalated the cost and area with additions of



electrification/STP and GST charges. The total sale cost was escalated to Rs. 96,40,065/- and cost escalation charges were applied in the final offer of possession.

16. That certain allottees requested the respondent in a meeting held on 15.10.2017, to reduce the aforesaid demand due to the excessive nature of the escalations made. Thereafter, an interim committee was set up to discuss the demand made under various heads and the discrepancies in calculation of certain charges. The demand for concession was then met wherein a discount of Rs. 130 per sq. ft. was offered to be credited to the account of the complainants subject to the conditions mentioned in the letter dated 23.10.2017.
17. That respondent falsely represented and assured complainants that upon taking physical possession all the deficiencies will be rectified. Based on respondent's representations, complainants paid Rs.15,72,296/- (including the cost escalation charges of Rs. 5,36,855.74, electrification and STP charges of Rs. 1,90,44.83 and PBIC of Rs. 177,000) as per offer of possession cum demand Letter and also requested hand over of the unit free from all deficiencies. But no action was taken to remove /rectify the deficiencies.
18. That the complainants were made to sign the indemnity cum undertaking for taking physical possession after the intimation of offer of possession in October - November 2017. The obvious purpose behind such an undertaking is to deter the allottee from making any claim or demands of any nature whatsoever, at the time of the offer of possession or anytime in future against the developer in relation to the unit which the allottee may find in the unit at any stage after taking physical possession.
19. That despite the escalated charges, based on the payment plan, the complainants paid a sum of Rs. 94,52,475/- (including the basic sale price



of Rs 80,78,924/-, Development charges of Rs. 380,306.70, Club Membership charges of Rs. 2,06,180/-, Electrification & STP charges of Rs. 190,244/-, Power Backup Installation charges of Rs. 1,77,000/-, Cost Escalation charges of Rs. 3,49,265/-, VAT of Rs. 70,553/- towards the said unit against total demands of Rs. 97,96,475/- from 2011 till 2017. Thereafter, on 01.04.2019, the complainants paid administrative and maintenance charges an amount of Rs. 61,472/-.

20. That on 01.05.2019, the complainants were forced to sign the maintenance & service agreement with business park maintenance pvt. ltd. despite the deplorable maintenance conditions of the project premises and grievances being raised against the same and the excessive nature of charges being demanded and grievances being raised by the complainants.
21. That the complainants on several occasions complained to the respondent and the business park maintenance services (P.) Ltd. on the given emails regarding the maintenance issues being faced by the complainants.
22. That it is very unfortunate that the complainants had become helpless and had to run from pillar to post within the organization of the respondent for the possession of his floor though the complainants had made almost the entire payment of the agreed amount/consideration but the possession of floor delivered was in abysmal condition.

**C. Relief sought by the complainants:**

23. The complainants have sought following relief(s):
  - a) Direct the respondent to handover the complete possession of the floor to the complainants with all amenities.
  - b) Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of actual possession.

- c) Direct the respondent not to charge club charges.
- d) Direct the respondent not to charge HVAT of Rs. 70,553/-.
- e) Direct the respondent not to charge GST of Rs. 2,38,204/-.

**D. Reply by the respondent**

- 24. That the present complaint is not maintainable as the conveyance deed for the unit in question has been duly executed between the parties on 29.05.2019. The conveyance deed was executed between the parties after handing over of the unit on 24.03.2018. It is important to point out that after enjoying the possession for around 1 year 2 months, the conveyance deed was executed between the parties without any protest.
- 25. That the complainants are residing in the same unit the possession of which has been questioned in the present complaint.
- 26. That the complaint could be adjudicated by this Hon'ble Authority after handing over of the possession and execution of the conveyance deed solely on the ground that the unit is marred with serious structural defects. But in the matter at hand, the complainants have not alleged anything with respect to structural defect. Furthermore, the complainants have mischievously concealed the factum of getting the conveyance deed registered in its name in the year 2019.
- 27. That the occupancy certificate for the said project was duly granted by the concerned authority on 19.09.2017. With respect to project 'Astaire Gardens', the respondent on account of implication of efficient and effective efforts had completed the construction of the project and thereby, applied for issuance of occupation certificate before the department of Director, Town and Country Planning, Chandigarh. On pretext of being satisfied with the construction of the units in accordance with the norms and policies directed earlier, the department vide memo



- no. 9305 dated 19.09.2017 granted occupation certificate for the said project.
28. That on execution of conveyance deed in favour of the complainants, vide present complaint the complainants have indulged in upraising allegations/contentions against the respondent beyond the provisions of Section 14(3) and Section 18(2) of the Real Estate (Regulation and Development) Act, 2016.
  29. That the respondent upon completing the construction with regard to the project and upon receipt of occupation certificate dated 19.09.2017 from the concerned departments, has issued offer letter dated 26.09.2017 and, thus requested the complainants to complete documentary formalities along with clearance of previous dues to initiate the process of registration of conveyance deed in their favor and further, handover of physical possession of the allotted unit.
  30. That the complainants on adequate examination and analysis of the contents of the offer letter dated 26.09.2017 and, being satisfied on account of investigation conducted with regard to allotted unit and, all other related aspects, the complainants without hesitation have accepted physical possession of the allotted unit on 24.03.2018 (which is a matter of fact). Thereafter, the complainants further by virtue of incorporated clause/s and/or recital/s braced/recorded within the conveyance deed dated 29.05.2019, got the same executed/registered in their favor without any demur or protest.
  31. That the respondent being a customer centric organization and as a goodwill gesture provided a special credit compensation amounting to Rs. 1,87,590.00/- apart from the compensation of Rs2,22,400.00/-/- already offered to the complainants at the time of offering possession. A settlement has already been arrived at prior to filing of the said complaint.

However, the complainants erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority to gain at the expense of the respondent, even though settlement has already been arrived at between the parties.

32. Copies of all the relevant documents have been duly 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 submissions made by the parties.

#### **E. Jurisdiction of the authority**

33. 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**

34. 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 purpose with offices 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.

#### **E.II Subject matter jurisdiction**

35. The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

36. 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 complainants at a later stage.

**F. Findings on the relief sought by the complainants.**

**Relief sought by the complainants:** The complainants had sought following relief(s):

- i. Direct the respondent to handover the complete possession of the floor to the complainants with all amenities.
37. The complainant has sought the relief for possession of the said unit, the authority is of view that the complainant has already taken over the possession on 24.03.2018 after receipt of occupation certificate by the respondent company from the competent authority. Even the conveyance deed was executed on 29.05.2019. Therefore, the said relief stands redundant.
- ii. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of actual possession.

38. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....*  
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

39. Clause 5 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

Clause 5.1- Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony...."

40. By virtue of clause 5 of the buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months from the date of sanctioning of the building plan or



execution of floor buyers agreement, whichever is later. The date of sanction of building plans were sanctioned on 15.05.2013 and buyers agreement was executed on 01.02.2012. The date of sanction of building plans being later due date is calculated from the date of sanction of building plans and the due date of possession comes out to be 15.05.2016.

41. The occupation certificate for the said project was received on 19.09.2017 and offered the possession on 26.09.2017. Thereafter the complainant has taken over the possession on 24.03.2018 and subsequently conveyance deed was executed between the parties on 29.05.2019.
42. As regard the delayed possession charges are concerned the authority is of the view that the respondent while offering the possession of the unit on 26.09.2017 has already credited an amount of Rs. 1,87,590/- and Rs. 2,22,400/- as compensation for delay in handing over of possession.
43. Moreover, the clause k of the conveyance deed dated 29.05.2019 is also relevant and reproduced hereunder for ready reference:

*k. The Vendee further confirms that after the execution of Conveyance Deed, the Vendee shall not raise any issue/dispute/claim with respect to any aspect of the Unit. Colony and/or plot, including but not limited to the location, super built up area, quality of construction, specifications and sale consideration, against the Vendors at any time in future. The vendee further confirms that execution of this Conveyance Deed will discharge the Vendor from all its obligations towards the Vendee.*

44. As per clause k of the conveyance deed, the allottee/vendee after the execution of conveyance deed they shall not raise any issue dispute or claim with respect to any aspect of unit.
45. The authority observes that the complainant-allottee has already taken over the possession on 24.03.2018 and for the delayed period the respondent has while offering the possession of the unit on 26.09.2017 has already credited an amount of Rs. 1,87,590/- and Rs. 2,22,400/- as

compensation. Further as per clause K of the conveyance deed dated 29.05.2019 the said relief stands redundant.

**F.III Direct the respondent not to charge club charges.**

**F.IV. Direct the respondent not to charge HVAT of Rs. 70,553/-.**

**F.V. Direct the respondent not to charge GST of Rs. 2,38,204/-.**

46. As far as common issues with regard to club charges, HVAT and GST are concerned, the same cannot be after execution of CD as obligation of promoter ends on the execution of CD. More so, as per clause k of the conveyance deed, the allottee/vendee after the execution of conveyance deed they shall not raise any issue dispute or claim with respect to any aspect of unit. Therefore, the authority cannot deliberate on these said issues.
47. Hence, no case for DPC is made out.
48. Complaint stands disposed of on merits.
49. File be consigned to registry.



**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 15.03.2024**