

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

Complaint no. : 1841 of 2018
First date of hearing : 19.03.2019
Date of decision : 03.09.2019

Mr. Shyam Sundar Ranganathan
R/o: D1/1061, Vasant Kunj,
New Delhi-110070.

...Complainant

Versus

1.M/s BPTP Ltd.,
2.Business Park Maintenance Services Pvt.
Ltd.
Both Address at: M-11, Middle Circle,
Connaught Circus, New Delhi-110001.

...Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Mr. Shyam Sundar
Ranganathan
Ms. Meena Hooda

Complainant in Person
Advocate for the respondents

ORDER

1. A complaint dated 20.11.2018 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. Shyam

Sundar Ranganathan, against the promoters M/s. BPTP Ltd. and anr., for non-fulfilment of obligations of the promoters/respondents under section 11(4)(a) of the Act *ibid.*

2. Since, the flat buyer's agreement dated 23.06.2009 was executed 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 respondents 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 Serene, Sector 37 D, Gurugram
2.	Registered/Unregistered	Not registered
3.	DTCP License no.	83 of 2008
4.	Nature of the real estate project	Group Housing Colony
5.	Payment plan	Construction linked plan
6.	Date of agreement	23.06.2009
7.	Unit no.	B 704, 7 th floor, tower B
8.	Area of unit	2450 sq. ft.
9.	Basic sale price as per flat buyer's agreement	Rs.57,45,250/-

10.	Total consideration as alleged by the complainant	Rs. 85,60,000/-
11.	Total amount paid by the complainant as alleged by the complainant	Rs. 85,64,000/-
12.	Date of issuance of sanction letter of building plans (as per the page 5 of flat buyers agreement)	22.12.2008
13.	Possession Clause 2.1 – 36 months plus 180 days grace period from the date of issuance of the sanction letter of the building plans of the said colony i.e. 22.12.2008	22.06.2012
14.	Delay till offer of possession	5 years 11 months 30 days
15.	Occupation certificate as alleged by respondent at page no. 7 of reply	10.07.2017
16.	Latest offer of possession (on page no.55 of reply)	21.06.2018 23.08.2017

4. Details provided above have been checked on the basis of record available in the case file which has been provided by the complainant and the respondents. A flat buyer's agreement dated 23.06.2009 is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 22.06.2012. The respondents have offered possession to the complainant on ~~21.06.2018~~

23.08.2017

Corrected vide order
dated 18/11/19

5. Taking cognizance of the complaint, the authority issued notice to the respondents for filing reply and appearance. The case came up for hearing on 19.03.2019, 01.05.2019, 25.07.2019 and 03.09.2019. The reply was filed on behalf of the respondent on 30.05.2019 and the same has been perused by the authority.

FACTS OF THE CASE:

6. The complainant submitted that M/s BPTP Ltd. approached the complainant with representations that they would be developing a project BPTP Park Serene, Sector 37D, Gurugram and the complainant was allotted a flat B-704 in tower B of the project and the flat buyer's agreement was signed by both parties on 23.06.2009.
7. The complainant submitted that respondent no. 1 sent a conditional offer of possession dated 08.08.2015 asking the complainant to take possession of the flat after making the balance payment by 06.11.2015. Along with this the respondent no. 2 also sent a related provisional invoice dated 08.08.2015 for advance maintenance charges for the period 06.12.2015 to 05.12.2016

8. The complainant submitted that on making enquiries, he learnt that the occupancy certificate had not been issues for this project. The complainant also learnt that under the applicable rules, respondent no. 1 could not offer possession until the concerned building had been certified by the concerned authority and an occupancy certificate had been issued in the respondents favour.
9. The complainant submitted that he was further advised that under the applicable rules, both offering and taking possession of a property in the absence of the OC was punishable.
10. The complainant submitted that he further learnt that the occupation certificate would not be issued until all the pending requirements were fully met by the BPTP and there were significant unmet requirements which would need substantially more time to complete.
11. The complainant submitted that based on the above mentioned facts, the complainant rejected the conditional offer of possession dated 08.08.2015 as being bad in law and made in bad faith through his letter dated 28.10.2015. The complainant had also categorically rejected the maintenance

invoice linked to offer of possession as being invalid and not tenable. There was no response from respondent no. 1 to this detailed letter from the complainant rejecting this illegal offer of possession, made in bad faith.

12. The complainant submitted that respondent no. 1 contacted the complainant in April 2017 to say that the occupation certificate was imminent and expected by the end of April 2017 or early May 2017. On this basis, the complainant was asked to make outstanding payments including a payment of advance maintenance charges for 1 year against the earlier invoice dated 08.08.2015.
13. The complainant submitted that he made the required payments through two cheques dated 26.04.2017 but said that he would take possession only when the occupation certificate was received.
14. The complainant submitted that respondent no. 1 informed the complainant through emails dated 11.07.2017 and 14.07.2017 that the occupation certificate had been received and asked to submit the necessary documents and make

- payments towards stamp duty and registration charges for taking possession and registration of the conveyance deed.
15. The complainant submitted that he submitted all the required documents for handing over possession and registration of the conveyance deed on 06.09.2017. The complainant received a letter dated 27.09.2017 showing that no documents were pending and asking him to make final payment including stamp duty and administrative charges for registration of the conveyance deed.
 16. The complainant submitted that the complainant made all the final payments on 10.10.2017 (including a payment through DD of Rs. 5,21,000 towards stamp duty charges for registration and another cheque payment of Rs. 29,661/- towards administrative charges linked to registration) and the complainant was informed that there were no pending payments and issued NOC dated 22.09.2017 for handing over possession of the apartment and completing the registration of conveyance deed.
 17. The complainant submitted that the complainant was asked to submit NOC to the site engineer who would then prepare the

flat and complete handover within 4 weeks. The complainant had submitted the NOC but despite continuous follow up, the flat was not ready until 26.02.2018. The complainant took over possession on the very day the flat was ready i.e.26.02.2018. Despite this the complainant again received a letter for further payment towards maintenance charges.

18. The complainant submitted that he was continuously following up with respondent no.1 for registration of the flat to be completed, as the full payment including stamp duty had been paid on 10.10.2017 and was assured that registration was imminent and would happen shortly. Apart from that, the complainant was stunned to receive an invoice dated 16.03.2018 from respondent no.2 asking for a further payment of Rs. 1,63,544 towards maintenance charges for the period from 06.12.2016 till 31.03.2018 and accrued interest on these maintenance charges.
19. The complainant submitted that the complainant subsequently received an email from respondent no. 1 dated 28.03.2018 indicating that registration of the conveyance deed was contingent on payment of this fresh demand of

Rs.1,63,544 referred to accrued interest on the maintenance charges.

20. The complainant submitted that he received a new invoice from respondent no.2 dated 13.09.2018 with additional maintenance charges for the period from 01.04.2018 to 30.09.2018 and also including the previously claimed amount of Rs.1,63,544.
21. The complainant submitted that he received an email from respondent no.2 on 08.10.2018, merely repeating that maintenance charges were payable from 06.12.2015. There was no justification or reasoning provided for how the maintenance charges could be linked to an arbitrary date of offer of possession, made in the absence of an occupation certificate.
22. The complainant submitted that he has received a further invoice INV/18-19/HR 92685 from respondent no.2 dated 25.10.2018, with additional maintenance charges for the period 01.10.2018 to 31.12.2018. The breakup of the invoice amount is as follows:

CAM charges (6.12.2016 to 31.12.2018):	214,666
Accrued Interest	: 26,617
Total	: 241,283

23. The complainant submitted that despite several communications, the conveyance deed wasn't registered and thus the complainant has approached this hon'ble authority.

ISSUES RAISED BY THE COMPLAINANTS:

24. The following issues have been raised by the complainant:
- Whether or not the respondent no. 1 made an offer of possession without even being granted the occupancy certificate?
 - Whether or not the respondent no .2 could start levying maintenance charges on a given date linked to the abovementioned offer of possession?
 - Whether or not the respondent no. 1 could collect full payment including the stand duty charges and administrative charges for registration of the conveyance deed and then deny registration indefinitely?

RELIEF SOUGHT BY THE COMPLAINANTS:

25. In view of the facts mentioned the following reliefs have been sought by the complainants:
- I. Invoice no. INV/18-19/HR 92685 dated 25.10.2018 from respondent no. 2 for Rs.241,283 to be cancelled. maintenance charges of Rs. 214,666 and accrued interest charges of Rs.26,617 payable in the above invoice to be revoked and declared not payable.
 - II. Payment towards annual (1 year) maintenance charges of Rs.100,137.60 already made through HDFC cheque no. 000002 dated 25.4.17, to be adjusted towards maintenance charges payable from February 26, 2018 (date of handing over possession) to February 25, 2019.
 - III. Complainant to be paid prescribed interest on the payment of Rs.550,661 made towards registration charges including the stamp duty. Prescribed interest on this paid amount of Rs.550,661 to be made for the period from October 10, 2017(date of payment) till the actual date of registration of the conveyance deed.
 - IV. Conveyance deed to be registered in the complainants favour.

REPLY BY THE RESPONDENTS:

26. The respondents submitted that the complainant has misrepresented that the flat was not ready until 26.02.2018. In this context, it is submitted that the offer of possession was sent to the complainant way back in 2015 and the process of taking the possession was delayed by the complainant. The NOC for fit outs has been issued by the respondents on 22.09.2017, however despite unit in question being ready, the complainant made delay on his part and finally took possession on 26.02.2018.
27. The respondents submitted that the complainant has concealed from this hon'ble authority that the respondent provided additional incentive in the form of timely payment discount (TPD) to the complainant and the complainant has availed total TPD of Rs.3,38,271.54/-.
28. The respondents submitted that the complainant has further concealed from this hon'ble authority that the respondents being a customer centric company had provided interest waiver of Rs. 2,18,316/- to the complainant on offer of possession and also duly compensated the complainant and

paid an amount of Rs. 3,90,615/- at the time of offer of possession.

29. The respondents submitted that the complainant has further concealed from this hon'ble authority that the complainant has failed to pay the outstanding dues of maintenance charges despite repeated reminder letters sent by the respondents. It is pertinent to mention that the process of registration of conveyance deed requires fulfilment of the monetary requirements by the complainant and once the same will be completed by the complainant the process of registration can be initiated. The respondent vide various letters dated 27.09.2017, 28.03.2018 and 21.06.2018 requested the complainant to pay the outstanding dues in order to expedite the process of registration of conveyance deed. However, the complainant despite repeated requests has failed to pay the outstanding dues till date. It is pertinent to mention that the complainant himself is delaying for the registration of the conveyance deed.
30. The respondents submitted that the respondent had received the occupation certificate on 10.07.2017 prior to the Haryana

Real Estate (Regulation and Development) Rules coming into force.

31. The respondents submitted that the relief(s) sought by the complainant is 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. The complainant entered into the said agreement with the respondents with open eyes and is bound by the same. The relief(s) sought by the complainant travel way beyond the four walls of the agreement duly executed between the parties. The complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement, including 6.3 of the said agreement, wherein the complainant has duly agreed to pay the maintenance charges as may be applicable by the maintenance service provider.
32. The respondents submitted that the complainant after taking the possession is raising the issues at a belated stage only with a view to wriggle out from his obligation and to create prejudice against the respondents. The respondents after completion of construction offered the possession to the

complainant on 08.08.2015 and also informed the complainant that the occupancy certificate has been duly applied by the respondents. The concerns of the complainant was duly addressed by the respondents to his full satisfaction and was amicably resolved by the respondents. The respondents had already applied for grant of occupation certificate and the due process for grant of occupation certificate had been followed by the various government departments concerned, in anticipation to the receipt of formal issuance of part-occupation certificate and keeping in mind the best interest of its customers, the respondents under a bonafide belief that the occupation certificate for the other towers would be received within 2-3 month time, extended an offer of possession to the allottees, which were ready, in order to save the time of such allottees as it is contemplated that minimum 2-3 month time is required by them to complete the necessary formalities such as clearance of dues, completion of documentation works, signing of agreements, purchasing of stamp papers by the allottees / respondents. The OC has been obtained by the respondents on 10.07.2017 and the complainant was duly informed about the same and

accordingly possession was taken by the complainant without any protest.

33. The respondents submitted that however, it is clarified that the payment made by the complainant is as per the agreed payment schedule and accordingly receipts for the same were issued by the respondent.
34. The respondents submitted that the NOC dated 22.09.2017 was issued by the respondent to carry out fit outs, however the complainant despite unit in question being completed delayed the process of taking the possession. The flat in question was ready by the respondent, however the complainant failed to take the possession and took the possession only on 26.02.2018. It is further submitted that the delay in taking the possession is on the part of the complainant.
35. The respondents submitted that the maintenance invoices raised by the respondents is as per the duly agreed terms of the maintenance agreement and the complainant is trying to wriggle out from his obligation to pay the maintenance charges. The respondent time and again requested the complainant to clear the outstanding dues in order to initiate the process of registration.

36. The respondents submitted that the complainant is misleading this hon'ble authority and is trying to create prejudice against the respondents. The NOC for fit outs was issued by the respondent no. 1 on 22.09.2017 and the flat was ready however the complainant delayed in taking the possession and finally took the possession on 26.02.2018. The respondents time and again requested the complainant to clear the outstanding dues in order to initiate the process of registration of conveyance deed. However, the complainant failed to clear the outstanding dues till date and due to which the process of registration is getting delayed due to the default on the part of the complainant.

Written arguments by complainant:

39. Offer of possession made on 01.08.2015 is ab initio null and void; hence the related maintenance invoice is also invalid. Law clearly prohibits offering and taking of possession without the occupancy certificate. This illegal offer of possession was made despite BPTP Limited being issued a show cause notice by STP, Gurgaon dated 21.07.2015, specifically prohibiting the respondent from making any offer of possession in the absence of the occupancy certificate.

40. After receiving the OC in July 2017, the respondent had raised a demand letter dated 27.09.2017 with all pending amounts payable for issuing the NOC for fit out and conveyance deed registration. This demand letter makes no reference to any other maintenance dues. This letter also asks for payment of stamp duty payable for registration of the conveyance deed and the administrative charges for completing the registration.
41. The respondent has also alleged delay on the complainant's part in taking possession, which is not supported by the facts. As per the respondent's admission, the OC was received on 11.07.2017 and the FBA provides for 90 days to complete payments and documentation. Full and final payment was made on 10.10.2017 (i.e. within 90 days) following which the NOC letter dated 22.09.2017 was handed over to him.
42. Possession was taken over by him as soon as the flat was ready on 26.02.2018 after necessary fit out was completed by the respondent. As the full payment was made on 10.10.2017 and he had already been waiting for 10 years to get possession of

the flat, it is an absurd claim that he would want to further delay taking over possession of the flat.

43. Despite all the demanded amounts being fully settled and NOC being issued, a further new claim of maintenance charges was raised on 16.03.2018 and the conveyance deed registration was made contingent on payment of these further charges. This is not tenable in law, as the claim is invalid and made as an afterthought after the final payment for registration had already been made and the NOC issued by the respondent.

44. If the honourable bench decides that the offer of possession without the OC was illegal and invalid, he would request the honourable bench to direct the respondent to immediately register the conveyance deed in his favour without any delay. Direct the respondent to withdraw all maintenance related invoices from December 2015 and raise fresh invoices for maintenance payable from 26.02.2018, on handing over of possession. The annual maintenance charges (for one year) of Rs. 1,00,137/- already paid on 28.04.2017 may please be adjusted against the annual dues for the period from 26.02.2018 to 25.02.2019. The complainant further pray that

as the respondent has wilfully not completed the registration of the conveyance deed despite complete payment having been made on 10.10.2017, the respondent is liable to pay applicable interest as decided by the honourable bench on the payment of Rs. 5.50 lakhs made on 10.10.2017 specifically towards the registration of the conveyance deed (stamp duty of Rs.5.21 lakhs + administrative charges of Rs.29, 661/-).

DETERMINATION OF ISSUES:

45. After considering the facts submitted by the complainant, and perusal of record on file, the issue wise determination are as follows:

- i. With respect to the **first issue** raised by the complainant, the authority is of the view that several offer of possession were made to the complainant, and the complainant was asked to pay the balance payment. However the respondent has asserted that an occupation certificate in respect of the project has been issued, but the same has not been produced on record. It has been stated by the counsel for the respondent that they have received OC on 11.07.2017 and issued possession letter to the



complainant on 23.08.2017 and the physical possession of the allotted unit was taken over by the complainant on ~~21.06.2018~~ ^{26.02.2018}, therefore, under section 18(1) proviso of the real estate (regulation and development) act 2016 read with rule 15 of the rules ibid, the respondent is liable to pay delayed possession charges in the form of interest to the complainant, at the prescribed rate of 10.45% per annum w.e.f 22.6.2012 till 23.8.2017 the offer of possession.

- ii. With respect to the **second and third issue** raised by the complainant, the respondent annexed a maintenance and service agreement on 30.06.2017 and a maintenance invoice dated 13.09.2018. The authority is of the view that the respondent is only entitled for charging maintenance charges from the complainant w.e.f. ~~21.6.2018~~ ^{26.02.2018} when the actual physical possession of the flat was taken over by the complainant. The respondent is directed to get the conveyance deed executed in favour of the buyer/complainant within a period of one month from the date of pronouncement of this order for which

Corrected vide order dated 18/11/19.

they have already received an amount of Rs.5,50,661/- towards stamp duty way back on 10.10.2017. If the complainant has already paid advance maintenance charges for one year i.e. till 23.6.2019, the respondent shall not charge double amount of maintenance charges.

FINDINGS OF THE AUTHORITY:

46. **Jurisdiction of the authority-** The project "Park Serene" is located in Sector-37 C, District Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.
47. 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 complainants at a later stage.

Arguments heard.

Brief facts leading to this complaint are that the complainant had purchased a residential unit No.B-704, 7th floor, Tower B, in project Park Serene, Sector 37-D, Gurugram and the Builder Buyer Agreement dated 23.06.2009 was executed between the parties. By virtue of clause 2.1, the possession was to be handed over to the complainant within a period of 36 months from the date of issuance of the sanction letter of the building plans i.e. 22.12.2008 + 6 months grace period which comes out to be 22.06.2012 . However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 85,64,000/- to the respondent against a total sale consideration of Rs. 85,60,000/-.

The basic issue at the moment is (i) no conveyance deed has been executed inter se the parties (ii) respondent is demanding maintenance charges since 6.12.2015 till date whereas the actual date of taking over of possession is ~~21.6.2018~~ ^{26.02.2018}. It has been stated by the counsel for the respondent that they have received OC on

*corrected vide order dated
18/11/19*

11.07.2017 and issued possession letter to the complainant on 23.08.2017 and the physical possession of the allotted unit was taken over by the complainant on ~~21.06.2018~~ ^{26.02.2018}, as such, the respondent is only entitled for charging maintenance charges from the complainant w.e.f. 21.6.2018 when the actual physical possession of the flat was taken over by the complainant. The respondent is directed to get the conveyance deed executed in favour of the buyer/complainant within a period of one month from the date of pronouncement of this order for which they have already received an amount of Rs.5,50,661/- towards stamp duty way back on 10.10.2017. If the complainant has already paid advance maintenance charges for one year i.e. till 23.6.2019, the respondent shall not charge double amount of maintenance charges.

In view of above facts and circumstances, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 22.6.2012 till 23.8.2017, the date offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

Corrected vide order
dated 18/11/19

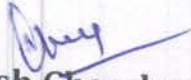
DECISION AND DIRECTIONS OF THE AUTHORITY:

48. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

- i. The respondents shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. from due date of possession i.e. 22.06.2012 till the ~~offer~~ ^{actual taking} of the possession i.e. ~~21.06.2018~~ ^{26.02.2018} on account of delay in handing over of possession to the complainants within 90 days from the date of issuance of this order.
- ii. The arrears of interest accrued so far shall be reimbursed 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 any amount/charges from the complainant which is not part of the flat buyer's agreement.

- v. 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.
49. The project is registerable and has not been registered by the promoters. The authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent.
50. The order is pronounced.
51. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2019

Corrected Judgement uploaded on 26.11.2019

**BEFORE THE HARYANA REAL ESTATE REGULATORY
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New Delhi-110070.

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12.	Date of issuance of sanction letter of building plans (as per the page 5 of flat buyers agreement)	22.12.2008
13.	Possession Clause 2.1 – 36 months plus 180 days grace period from the date of issuance of the sanction letter of the building plans of the said colony i.e. 22.12.2008	22.06.2012
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16. The complainant submitted that the complainant made all the final payments on 10.10.2017 (including a payment through DD of Rs. 5,21,000 towards stamp duty charges for registration and another cheque payment of Rs. 29,661/- towards administrative charges linked to registration) and the complainant was informed that there were no pending payments and issued NOC dated 22.09.2017 for handing over possession of the apartment and completing the registration of conveyance deed.
17. The complainant submitted that the complainant was asked to submit NOC to the site engineer who would then prepare the

flat and complete handover within 4 weeks. The complainant had submitted the NOC but despite continuous follow up, the flat was not ready until 26.02.2018. The complainant took over possession on the very day the flat was ready i.e.26.02.2018. Despite this the complainant again received a letter for further payment towards maintenance charges.

18. The complainant submitted that he was continuously following up with respondent no.1 for registration of the flat to be completed, as the full payment including stamp duty had been paid on 10.10.2017 and was assured that registration was imminent and would happen shortly. Apart from that, the complainant was stunned to receive an invoice dated 16.03.2018 from respondent no.2 asking for a further payment of Rs. 1,63,544 towards maintenance charges for the period from 06.12.2016 till 31.03.2018 and accrued interest on these maintenance charges.
19. The complainant submitted that the complainant subsequently received an email from respondent no. 1 dated 28.03.2018 indicating that registration of the conveyance deed was contingent on payment of this fresh demand of

- Rs.1,63,544 referred to accrued interest on the maintenance charges.
20. The complainant submitted that he received a new invoice from respondent no.2 dated 13.09.2018 with additional maintenance charges for the period from 01.04.2018 to 30.09.2018 and also including the previously claimed amount of Rs.1,63,544.
21. The complainant submitted that he received an email from respondent no.2 on 08.10.2018, merely repeating that maintenance charges were payable from 06.12.2015. There was no justification or reasoning provided for how the maintenance charges could be linked to an arbitrary date of offer of possession, made in the absence of an occupation certificate.
22. The complainant submitted that he has received a further invoice INV/18-19/HR 92685 from respondent no.2 dated 25.10.2018, with additional maintenance charges for the period 01.10.2018 to 31.12.2018. The breakup of the invoice amount is as follows:

CAM charges (6.12.2016 to 31.12.2018): 214,666

Accrued Interest : 26,617

Total : 241,283

23. The complainant submitted that despite several communications, the conveyance deed wasn't registered and thus the complainant has approached this hon'ble authority.

ISSUES RAISED BY THE COMPLAINANTS:

24. The following issues have been raised by the complainant:

- i. Whether or not the respondent no. 1 made an offer of possession without even being granted the occupancy certificate?
- ii. Whether or not the respondent no .2 could start levying maintenance charges on a given date linked to the abovementioned offer of possession?
- iii. Whether or not the respondent no. 1 could collect full payment including the stand duty charges and administrative charges for registration of the conveyance deed and then deny registration indefinitely?

RELIEF SOUGHT BY THE COMPLAINANTS:

25. In view of the facts mentioned the following reliefs have been sought by the complainants:
- I. Invoice no. INV/18-19/HR 92685 dated 25.10.2018 from respondent no. 2 for Rs.241,283 to be cancelled. maintenance charges of Rs. 214,666 and accrued interest charges of Rs.26,617 payable in the above invoice to be revoked and declared not payable.
 - II. Payment towards annual (1 year) maintenance charges of Rs.100,137.60 already made through HDFC cheque no. 000002 dated 25.4.17, to be adjusted towards maintenance charges payable from February 26, 2018 (date of handing over possession) to February 25, 2019.
 - III. Complainant to be paid prescribed interest on the payment of Rs.550,661 made towards registration charges including the stamp duty. Prescribed interest on this paid amount of Rs.550,661 to be made for the period from October 10, 2017(date of payment) till the actual date of registration of the conveyance deed.
 - IV. Conveyance deed to be registered in the complainants favour.

REPLY BY THE RESPONDENTS:

26. The respondents submitted that the complainant has misrepresented that the flat was not ready until 26.02.2018. In this context, it is submitted that the offer of possession was sent to the complainant way back in 2015 and the process of taking the possession was delayed by the complainant. The NOC for fit outs has been issued by the respondents on 22.09.2017, however despite unit in question being ready, the complainant made delay on his part and finally took possession on 26.02.2018.
27. The respondents submitted that the complainant has concealed from this hon'ble authority that the respondent provided additional incentive in the form of timely payment discount (TPD) to the complainant and the complainant has availed total TPD of Rs.3,38,271.54/-.
28. The respondents submitted that the complainant has further concealed from this hon'ble authority that the respondents being a customer centric company had provided interest waiver of Rs. 2,18,316/- to the complainant on offer of possession and also duly compensated the complainant and

paid an amount of Rs. 3,90,615/- at the time of offer of possession.

29. The respondents submitted that the complainant has further concealed from this hon'ble authority that the complainant has failed to pay the outstanding dues of maintenance charges despite repeated reminder letters sent by the respondents. It is pertinent to mention that the process of registration of conveyance deed requires fulfilment of the monetary requirements by the complainant and once the same will be completed by the complainant the process of registration can be initiated. The respondent vide various letters dated 27.09.2017, 28.03.2018 and 21.06.2018 requested the complainant to pay the outstanding dues in order to expedite the process of registration of conveyance deed. However, the complainant despite repeated requests has failed to pay the outstanding dues till date. It is pertinent to mention that the complainant himself is delaying for the registration of the conveyance deed.
30. The respondents submitted that the respondent had received the occupation certificate on 10.07.2017 prior to the Haryana

Real Estate (Regulation and Development) Rules coming into force.

31. The respondents submitted that the relief(s) sought by the complainant is 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. The complainant entered into the said agreement with the respondents with open eyes and is bound by the same. The relief(s) sought by the complainant travel way beyond the four walls of the agreement duly executed between the parties. The complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement, including 6.3 of the said agreement, wherein the complainant has duly agreed to pay the maintenance charges as may be applicable by the maintenance service provider.
32. The respondents submitted that the complainant after taking the possession is raising the issues at a belated stage only with a view to wriggle out from his obligation and to create prejudice against the respondents. The respondents after completion of construction offered the possession to the

complainant on 08.08.2015 and also informed the complainant that the occupancy certificate has been duly applied by the respondents. The concerns of the complainant was duly addressed by the respondents to his full satisfaction and was amicably resolved by the respondents. The respondents had already applied for grant of occupation certificate and the due process for grant of occupation certificate had been followed by the various government departments concerned, in anticipation to the receipt of formal issuance of part-occupation certificate and keeping in mind the best interest of its customers, the respondents under a bonafide belief that the occupation certificate for the other towers would be received within 2-3 month time, extended an offer of possession to the allottees, which were ready, in order to save the time of such allottees as it is contemplated that minimum 2-3 month time is required by them to complete the necessary formalities such as clearance of dues, completion of documentation works, signing of agreements, purchasing of stamp papers by the allottees / respondents. The OC has been obtained by the respondents on 10.07.2017 and the complainant was duly informed about the same and

accordingly possession was taken by the complainant without any protest.

33. The respondents submitted that however, it is clarified that the payment made by the complainant is as per the agreed payment schedule and accordingly receipts for the same were issued by the respondent.
34. The respondents submitted that the NOC dated 22.09.2017 was issued by the respondent to carry out fit outs, however the complainant despite unit in question being completed delayed the process of taking the possession. The flat in question was ready by the respondent, however the complainant failed to take the possession and took the possession only on 26.02.2018. It is further submitted that the delay in taking the possession is on the part of the complainant.
35. The respondents submitted that the maintenance invoices raised by the respondents is as per the duly agreed terms of the maintenance agreement and the complainant is trying to wriggle out from his obligation to pay the maintenance charges. The respondent time and again requested the complainant to clear the outstanding dues in order to initiate the process of registration.

36. The respondents submitted that the complainant is misleading this hon'ble authority and is trying to create prejudice against the respondents. The NOC for fit outs was issued by the respondent no. 1 on 22.09.2017 and the flat was ready however the complainant delayed in taking the possession and finally took the possession on 26.02.2018. The respondents time and again requested the complainant to clear the outstanding dues in order to initiate the process of registration of conveyance deed. However, the complainant failed to clear the outstanding dues till date and due to which the process of registration is getting delayed due to the default on the part of the complainant.

Written arguments by complainant:

39. Offer of possession made on 01.08.2015 is ab initio null and void; hence the related maintenance invoice is also invalid. Law clearly prohibits offering and taking of possession without the occupancy certificate. This illegal offer of possession was made despite BPTP Limited being issued a show cause notice by STP, Gurgaon dated 21.07.2015, specifically prohibiting the respondent from making any offer of possession in the absence of the occupancy certificate.

40. After receiving the OC in July 2017, the respondent had raised a demand letter dated 27.09.2017 with all pending amounts payable for issuing the NOC for fit out and conveyance deed registration. This demand letter makes no reference to any other maintenance dues. This letter also asks for payment of stamp duty payable for registration of the conveyance deed and the administrative charges for completing the registration.
41. The respondent has also alleged delay on the complainant's part in taking possession, which is not supported by the facts. As per the respondent's admission, the OC was received on 11.07.2017 and the FBA provides for 90 days to complete payments and documentation. Full and final payment was made on 10.10.2017 (i.e. within 90 days) following which the NOC letter dated 22.09.2017 was handed over to him.
42. Possession was taken over by him as soon as the flat was ready on 26.02.2018 after necessary fit out was completed by the respondent. As the full payment was made on 10.10.2017 and he had already been waiting for 10 years to get possession of

the flat, it is an absurd claim that he would want to further delay taking over possession of the flat.

43. Despite all the demanded amounts being fully settled and NOC being issued, a further new claim of maintenance charges was raised on 16.03.2018 and the conveyance deed registration was made contingent on payment of these further charges. This is not tenable in law, as the claim is invalid and made as an afterthought after the final payment for registration had already been made and the NOC issued by the respondent.
44. If the honourable bench decides that the offer of possession without the OC was illegal and invalid, he would request the honourable bench to direct the respondent to immediately register the conveyance deed in his favour without any delay. Direct the respondent to withdraw all maintenance related invoices from December 2015 and raise fresh invoices for maintenance payable from 26.02.2018, on handing over of possession. The annual maintenance charges (for one year) of Rs. 1,00,137/- already paid on 28.04.2017 may please be adjusted against the annual dues for the period from 26.02.2018 to 25.02.2019. The complainant further pray that

as the respondent has wilfully not completed the registration of the conveyance deed despite complete payment having been made on 10.10.2017, the respondent is liable to pay applicable interest as decided by the honourable bench on the payment of Rs. 5.50 lakhs made on 10.10.2017 specifically towards the registration of the conveyance deed (stamp duty of Rs.5.21 lakhs + administrative charges of Rs.29, 661/-).

DETERMINATION OF ISSUES:

45. After considering the facts submitted by the complainant, and perusal of record on file, the issue wise determination are as follows:

- i. With respect to the **first issue** raised by the complainant, the authority is of the view that several offer of possession were made to the complainant, and the complainant was asked to pay the balance payment. However the respondent has asserted that an occupation certificate in respect of the project has been issued, but the same has not been produced on record. It has been stated by the counsel for the respondent that they have received OC on 11.07.2017 and issued possession letter to the

complainant on 23.08.2017 and the physical possession of the allotted unit was taken over by the complainant on 21.06.2018, therefore, under section 18(1) proviso of the real estate (regulation and development) act 2016 read with rule 15 of the rules ibid, the respondent is liable to pay delayed possession charges in the form of interest to the complainant, at the prescribed rate of 10.45% per annum w.e.f 22.6.2012 till 23.8.2017 the offer of possession.

- ii. With respect to the **second and third issue** raised by the complainant, the respondent annexed a maintenance and service agreement on 30.06.2017 and a maintenance invoice dated 13.09.2018. The authority is of the view that the respondent is only entitled for charging maintenance charges from the complainant w.e.f. 21.6.2018 when the actual physical possession of the flat was taken over by the complainant. The respondent is directed to get the conveyance deed executed in favour of the buyer/complainant within a period of one month from the date of pronouncement of this order for which

they have already received an amount of Rs.5,50,661/- towards stamp duty way back on 10.10.2017. If the complainant has already paid advance maintenance charges for one year i.e. till 23.6.2019, the respondent shall not charge double amount of maintenance charges.

FINDINGS OF THE AUTHORITY:

46. **Jurisdiction of the authority-** The project "Park Serene" is located in Sector-37 C, District Gurugram, thus the authority has complete territorial jurisdiction to entertain the present complaint. As the project in question is situated in planning area of Gurugram, therefore the authority has complete territorial jurisdiction vide notification no.1/92/2017-1TCP issued by Principal Secretary (Town and Country Planning) dated 14.12.2017 to entertain the present complaint. As the nature of the real estate project is commercial in nature so the authority has subject matter jurisdiction along with territorial jurisdiction.
47. 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 complainants at a later stage.

Arguments heard.

Brief facts leading to this complaint are that the complainant had purchased a residential unit No.B-704, 7th floor, Tower B, in project Park Serene, Sector 37-D, Gurugram and the Builder Buyer Agreement dated 23.06.2009 was executed between the parties. By virtue of clause 2.1, the possession was to be handed over to the complainant within a period of 36 months from the date of issuance of the sanction letter of the building plans i.e. 22.12.2008 + 6 months grace period which comes out to be 22.06.2012. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 85,64,000/- to the respondent against a total sale consideration of Rs. 85,60,000/-.

The basic issue at the moment is (i) no conveyance deed has been executed inter se the parties (ii) respondent is demanding maintenance charges since 6.12.2015 till date whereas the actual date of taking over of possession is 21.6.2018. It has been stated by the counsel for the respondent that they have received OC on

11.07.2017 and issued possession letter to the complainant on 23.08.2017 and the physical possession of the allotted unit was taken over by the complainant on 21.06.2018, as such, the respondent is only entitled for charging maintenance charges from the complainant w.e.f. 21.6.2018 when the actual physical possession of the flat was taken over by the complainant. The respondent is directed to get the conveyance deed executed in favour of the buyer/complainant within a period of one month from the date of pronouncement of this order for which they have already received an amount of Rs.5,50,661/- towards stamp duty way back on 10.10.2017. If the complainant has already paid advance maintenance charges for one year i.e. till 23.6.2019, the respondent shall not charge double amount of maintenance charges.

In view of above facts and circumstances, the complainant is entitled for delayed possession charges at prescribed rate of interest i.e. 10.45% per annum w.e.f 22.6.2012 till 23.8.2017, the date offer of possession as per the provisions of section 18 (1) of the Real Estate (Regulation & Development) Act, 2016.

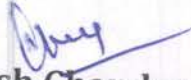
DECISION AND DIRECTIONS OF THE AUTHORITY:

48. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions: -

- i. The respondents shall be liable to pay interest for every month of delay at prescribed rate i.e. 10.45% p.a. from due date of possession i.e. 22.06.2012 till the offer of the possession i.e. 21.06.2018 on account of delay in handing over of possession to the complainants within 90 days from the date of issuance of this order.
- ii. The arrears of interest accrued so far shall be reimbursed 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 any amount/charges from the complainant which is not part of the flat buyer's agreement.

- v. 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.
49. The project is registerable and has not been registered by the promoters. The authority has decided to take suo-moto cognizance for not getting the project registered and for that separate proceeding will be initiated against the respondent.
50. The order is pronounced.
51. Case file be consigned to the registry.


(Samir Kumar)
Member


(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2019

Judgement uploaded on 15.10.2019