

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

Complaint no. : 444 of 2019
Date of First hearing: 08.08.2019
Date of decision : 30.08.2019

1. Mr. Prashant Chandrakant Soni

2. Mrs. ^{Pooja} Prashant Soni

Both R/o. House no- 92, Saifie Society
beside SMC Zone office, LH Road Surat,
Surat City (Gujarat)-395006.

Complainants

Versus

1. 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 (Petition)

Haryana Real Estate Regulatory Authority, Gurugram

(Authorised by resolution no. HARERA,
GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)
under section 81 of the Real Estate (Regulation and
Development) Act, 2016.

APPEARANCE:

Ms. Priyanka Agarwal

A.R. for the Complainants

Ms. Meena Hooda, Adv.

alongwith Ms. Sakshi Khater, Adv.

and Shri Sidhant Yadav

A.R. for the Respondent

*Corrected vide
order dated
10/06/2021*

30-8-19

EXPARTE ORDER

1. The present complaint filed on 13.02.2019 relates to a flat buyer's agreement dated 18.12.2012 executed between the complainants and the respondent promoter, registered with this authority vide registration no. 7 of 2018 dated 03.01.2018, in respect of flat measuring 1470 sq. ft. super area bearing no. T5- 1701, 17th floor, tower T5 of the project, namely "Park Generations" situated in Sector 37D, Gurugram, (in short, the subject flat) for a basic sale price of Rs. 54,24,300/- and other charges as per the agreement and the complainant opted for construction linked payment plan.
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.	83 of 2008 and additional license no. 94 of 2011.
3.	Nature of real estate project	Group housing.
4.	Flat/unit no.	T5-1701, 17 th floor in tower T5.
5.	Measuring area of the allotted flat	1470 sq. ft.
6.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.
7.	Date of completion as per RERA registration certificate.	30.4.2018 (Tower T-76, 17 & 19) and 30.1 1.2018(Tower T-14, 15 &18)
8.	Date of allotment letter	14.01.2013

9.	Date of execution of flat buyer agreement	18.12.2012
10.	Payment Plan	Construction linked payment plan
11.	Basic sale price of the allotted unit	Rs. 54,24,300/- as per the flat buyer agreement page no 53
12.	Total consideration as per statement of accounts cum invoice	Rs. 66,22,530/- Annex P/1 at Page 17 of the complaint
13.	Total amount paid by the complainant till date	Rs.65,75,577/- Annex P/1
14.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 18.12.2012	18.06.2016 (Note - 36 months plus 180 days grace period from the date of execution of agreement)
15.	Date of offer of possession letter	Not offered
16.	Delay in handing over possession	Continuing

3. As per clause 3.1 of the agreement, the respondent had agreed to handover the possession of the subject flat to the complainants 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. However, according to the complainants various terms of the

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flat buyer's agreement were absolutely one sided, unfair, arbitrary and highly unreasonable and abuse of dominant position of the respondent.

4. It is submitted that they requested a unit between 4th to 6th floor because complainant is having problem of height phobia and the same was mentioned on the application form. It is further stated that the respondent even then allotted to the complainants the flat on 17th floor, T5- 1702.
5. It is stated that respondent demanded under construction linked plan for "at the start of Excavation" which was raised on July, 05, 2012. This was even before the execution of the flat buyer's agreement is illegal and arbitrary. The flat buyer's agreement was executed between both the parties vide dated 18.12.2012.
6. It is submitted that they had been making timely payment of the instalments against the demands raised by the respondent from time to time, making a total payment of Rs. 65,75,577/- which constitutes to approximately 95% of the total sales consideration i.e. Rs. 66,22,530/- in respect of the subject flat. The last instalment is remaining to be paid on the part of the complainants. It is further submitted that the

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possession of the said flat was to be delivered on or before December, 18, 2015 as per clause 3.1 of the agreement and the same has not been delivered by the respondent till date.

7. According to the complainants they had paid EMI on the sanctioned home loan of Rs. 52,90,000/- from HDFC bank which was taken to purchase the said flat and EMI of Rs. 52,815/- per month was to be paid. The complainants got their home loan transferred from HDFC bank to SBI bank on 18.07.2014 and the total interest paid to the banks from January 2013 to 18.07.2016 was Rs. 11,17,625/-.
8. Complainants have stated that they do not intend to withdraw from the project.
9. It is submitted that since the respondent charges @ 18% p.a. interest in case of any delay in making payment of instalment, the complainants are also entitled to the same rate of interest @ 18% p.a. on the deposited amount for the delay in handing over possession of the subject flat by the respondent and compensation for causing losses as provided under section 18(3) of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act).

Decision
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10. Apprehensions to the complainant is that the respondent may raise the demand for escalation cost, increased super area and GST. According to the complainants, the aforesaid act of the respondent apart from being unjust, unfair, arbitrary, unreasonable, abuse of the dominant position in the industry constitutes the unfair trade practice. Hence, this complaint.

11. The following issues have been raised to be decided by the Authority: -

1. Whether the respondent has breached the provision of the Act as well as the agreement by not completing the construction of the unit in time bound manner?
2. Whether complainant no. 2 has problem of height phobia ad which was strongly informed to the builder before allotment of unit and still the builder allotted unit in 17th floor is illegal, unilateral and arbitrary?
3. Whether the respondent has unjustly enriched them by misusing the hard earned money the complainant for almost 7 years without paying any interest or penalty for the delay in delivery of the said unit?



4. Whether the respondent is liable to pay interest on the amount paid to them by the complainant at the same rate of 18% which they charged from the complainants in case of delayed payment by the complainant?
5. Whether flat buyer's agreement clause of escalation cost, increase in super area, VAT charges, GST charges and advance maintenance, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a builder guise of a biased, arbitrary and one sided drafting of the flat buyer's agreement with a malicious and fraudulent intention?
6. Whether at builder's default, complainants got document from builder for disbursement of home loan 6 months late from sanction of home loan? Whether the respondent collected more than 95 % amount from the complainants but not made expenses on particular project so project is delayed?
7. Whether it is justified the respondent has passed more than 7 years in development of project and

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super structure ready 4 years back but project is still incomplete?

12. The reliefs sought are detailed as under: -

1. Direct the respondent to pay monthly interest on the amount collected from the complainants till date and hand over the possession of the subject flat immediately.

2. Direct the respondent to pay interest on paid amount of Rs. 6575577/- from 18.12.2015 alongwith pendent lite and future interest till actual possession thereof @ 18%.

3. Direct the respondent to quash the clause of one sided agreement, regarding escalation cost, increase in the super area of the flat, VAT charges and demand of advance maintenance, mentioned in the flat buyer's agreement.

13. Notice of the complaint has been issued to the respondent through speed post and on its email address and the delivery report has been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint Accordingly,

the authority is left with no other option but to decide the complaint exparte against the respondent.

14. Arguments heard.

Issue wise findings of the Authority:-

15. **Issue no. 1, 2, 3, 5, 6, 7 and 8 :-**As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the flat buyer's agreement, there is every reason to believe that vide the flat buyer's agreement dated 18.12.2012 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 18.06.2016. But till date no offer of possession had been offered to the complainants. Hence, in the considered finding of this Authority, it is held that there is a delay in offering the possession of the subject flat to the complainants till date and this was in violation of the terms and conditions of the flat buyer's agreement and also violation of section 11(4)(a) of



the Act. There is no evidence to show that after the allotment the complainants had made any further request to the respondent to allot a flat at a lower tower or that the respondent has enriched itself. Moreover, the payment of interest on delayed possession to the complainants is the efficacious remedy under the Act.

16. **Issue no. 4:-** In the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prescribed rate of interest of 10.45% per annum as prescribed in Rule 15 of the Haryana Real Estate (Regulatory and Development) Rules, 2017.

Findings of the authority: -

5. 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

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14.12.2018 issued by Town and Country Planning 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:-

6. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.45% per annum to the complainants with effect from the committed date of delivery of possession till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7th day of each succeeding English calendar month till the actual handing over of possession of the subject flat to the complainants subject to the complainant's depositing the entire remaining sales consideration with interest at the rate

of 10.45% p.a. and other charges in case there is any actual delay in making payment on the part of the complainants.

7. The complaint stands disposed of accordingly.

8. The case file be consigned to the registry.

N. K. Goel
N. K. Goel

30.8.19

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)
Haryana Real Estate Regulatory Authority, Gurugram
(Authorised by resolution no. HARERA,
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2019) under section 81, Real Estate (Regulation and
Development) Act, 2016.

Dated: 30.08.2019

1. Order ratified by the Authority as above.

(Samir Kumar)
(Samir Kumar)
Member

(Subhash Chander Kush)
(Subhash Chander Kush)
Member

HARERA
GURUGRAM
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: -30.08.2019

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14. Arguments heard.

Issue wise findings of the Authority:-

15. **Issue no. 1, 2, 3, 5, 6, 7 and 8 :-**As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the flat buyer's agreement, there is every reason to believe that vide the flat buyer's agreement dated 18.12.2012 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 18.06.2016. But till date no offer of possession had been offered to the complainants. Hence, in the considered finding of this Authority, it is held that there is a delay in offering the possession of the subject flat to the complainants till date and this was in violation of the terms and conditions of the flat buyer's agreement and also violation of section 11(4)(a) of



the Act. There is no evidence to show that after the allotment the complainants had made any further request to the respondent to allot a flat at a lower tower or that the respondent has enriched itself. Moreover, the payment of interest on delayed possession to the complainants is the efficacious remedy under the Act.

16. **Issue no. 4:-** In the opinion of this Authority the complainants are entitled to interest on delayed offer of possession. Accordingly, it is held that the complainants are entitled for delayed possession charges at the prescribed rate of interest of 10.45% per annum as prescribed in Rule 15 of the Haryana Real Estate (Regulatory and Development) Rules, 2017.

Findings of the authority: -

5. 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

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Decision and directions of the Authority:-

6. The authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prescribed rate of interest of 10.45% per annum to the complainants with effect from the committed date of delivery of possession till the date of this order within a period of 90 days and to continue to pay the charges month by month by the 7th day of each succeeding English calendar month till the actual handing over of possession of the subject flat to the complainants subject to the complainant's depositing the entire remaining sales consideration with interest at the rate

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HARERA
GURUGRAM

Complaint No. 444 of 2019

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7. The complaint stands disposed of accordingly.
8. The case file be consigned to the registry.

N. K. Goel *30.8.19*

(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/16th July
2019) under section 81, Real Estate (Regulation and
Development) Act, 2016.

Dated: 30.08.2019

1. 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: -30.08.2019

Judgement uploaded on 05.09.2019