

PROCEEDINGS OF THE DAY

Day and Date	Thursday and 07.02.2019
Complaint No.	433/2018 Case Titled As Mr. Mohit Manchanda V/S M/S BPTP Ltd.
Complainant	Mr. Mohit Manchanda
Represented through	Complainants in person with Shri V.K.Dahiya, Advocate.
Respondent	M/S BPTP Ltd.
Respondent Represented through	Shri Shashank Bhushan Advocate for the respondent.
Last date of hearing	6.2.2019
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Project is not registered with the authority.

Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.

As per clause 1.4 of the BBA dated 21.11.2013 for unit No.D-58-SF in project "Pedestal" Sector-70A, Gurugram, the possession of the booked unit was to be handed over to the complainant within a period of 36 months from the date of execution of BBA + 6 months grace period which comes out to be 21.5.2017. However, the respondent has miserably failed to deliver the unit to the complainant in time. The complainant on account of his pitiable

financial condition is not in a position to pay the balance amount to the respondent in order to take over the possession of the unit.

A tripartite agreement was signed inter-se the buyer, respondent and HDFC Bank on 21.11.2013 under the subvention scheme. According to the terms and conditions of tripartite agreement, pre-EMIs till the offer of possession was to be borne by the respondent. However, on failure of the respondent to pay the pre-EMI amount, HDFC Bank debited the pre-EMI amount from the account of the complainant.

Considering the facts and circumstances of the matter and consent of the complainant to forgo 10% of the basic sale price towards earnest money, the authority is of the considered opinion that complainant is entitled to get back the deposited amount with prescribed rate of interest after deduction of 10% of earnest money. Accordingly, the respondent is directed to refund the deposited amount after deduction of 10% of earnest money, alongwith pre-EMIs paid by the complainant. A statement of accounts duly signed by both the parties has been placed on record, the payable amount is as under:-

1. Amount paid by the complainant	Rs.14,65,292/-
2. Amount paid by HDFC bank	Rs.21,93,432/-
3. Pre-EMI due	Rs.2,74,185/-
4. Amount to be deducted @ 10% of BSP	Rs.8,12,495/-

The order is pronounced as below:-

1. Respondent will refund the amount paid by the complainant after deducting 10% of BSP
2. The respondent will settle the matter w.r.t. pre-EMIs under the subvention scheme with HDFC bank.

3. The respondent will refund the pre-EMIs amount which have been paid by the buyer on account of default on the part of respondent.
4. The amount shall be refunded to the complainant alongwith interest @ 10.75% from the date of receipt of payments.
5. The matter shall be settled within 90 days from the date of this order.

Complaint stands disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
7.2.2019

Subhash Chander Kush
(Member)

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

Complaint no. : 433 of 2018
First date of hearing : 7.8.2018
Date of decision : 7.2.2019

Mr. Mohit Manchanda
R/o: House no 841, Ground floor,
Sector-5, Gurugram, Haryana-122001

Complainant

Versus

M/s BPTP Pvt. Ltd.
Address: 28, ECE House, 1st floor, KG Marg,
New Delhi: 110001.

Respondents

CORAM:

Shri Samir Kumar
Shri Subhash Chander Kush

**Member
Member**

APPEARANCE:

Shri V.K Dahiya Advocate for the complainant
Shri Mohit Manchanda Complainant in person
Shri Shashank Bhushan Advocate for the respondent

ORDER

1. A complaint dated 14.6.2018 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. Mohit Manchanda against the promoter M/s BPTP Pvt Ltd., on account of violation of the clause 1.4, 1.5 of buyer's agreement executed on 21.11.2013 in respect of unit



described as below for not handing over possession by the due date which is an obligation of the promoter under section 11(4)(a) of the Act *ibid*.

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

***Nature of project:** Residential

***DTCP license no.:** 15 of 2011 dated 7.3.2011

1.	Name and location of the project	Pedestal, Sector 70 A, Gurugram
2.	DTCP license no.	15 of 2011 Dated 07/03/2011
3.	Registered/Unregistered	Not registered
4.	Date of execution of floor buyer's agreement	21.11.2013
5.	Residential floor space/unit no.	D-58-SF
6.	Unit measuring	1080 sq. ft.
7.	Payment plan	Subvention scheme
8.	Total consideration amount	Rs. 91,27,727/-
9.	Total amount paid by the complainant	Rs. 36,58,724/-
10.	Due date of delivery of possession as per clause 1.4, 5.1 of floor buyer's agreement i.e. 36 months from the execution of floor buyer's agreement + grace period of 180 days	21.5.2017
11.	Delay in handing over possession till date	1 year 8 months 17 days
12.	Penalty clause 6.1 of floor buyer's agreement	Delay up to 6 months: Rs 10 per sq. ft. 6-12 months: Rs 20 per



		sq. ft. More than 12 months: Rs 30
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3. The details provided above have been checked on the basis of record available in the case file which has been provided by the complainants and the respondent. A buyer's agreement is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 21.5.2017. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor they have paid any compensation @ Rs.30/- per sq. ft per month of the super area of till the notice of possession as per clause 6.1 of the buyer's agreement. Therefore, the promoter has not fulfilled his committed liability as on date.
4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. The reply has been filed by the respondent.

BRIEF FACTS

5. The complainant booked a residential flat in the project of the respondent namely Pedestal floors at Sector 70A in subvention plan. Whereas the booking of the unit was done under "subvention till possession" where the EMI for complainants was to start only on offer of possession &



respondents committed to pay the EMIs directly to funding bank. However monthly debits of EMIs from the complainants account as a result of failure at the end of respondents to amend the subvention period in tripartite agreement with the funding bank as committed (page 103 of complaint paper book) can affect the credit history and CIBIL score of the complainants.

6. While EMIs were paid directly to the funding Bank by the respondent till November 16, later the EMIs debited had been unilaterally & irregularly reversed by the respondent into complainant account from December 16 to October 17 thereby respondents exposed the complainants to additional income tax liability as well.
7. Further from November 17 onwards to till date the EMIs are regularly getting deducted from the complainant's account but not reversed by the respondent.
8. The total cost of the unit was Rs 91,27,727/- and a total payment of Rs 36,58,724/- was made by 26.2.2018. The complainant sent a legal notice on 26.2.2018 to the promoter to terminate the buyer's agreement and seek cancellation and refund of his money but there were no response till date. Despite the reminders after a gap of 1.5 months the



respondent started raising demands which have been duly replied with by the complainants with reference of legal notice.

9. The agreement was signed on 21.11.2013 whereby the possession should have been given within 36 months from the buyer's agreement with 180 days grace period. The respondent has to bear interest till possession which it will pay directly to the bank and EMI will start only after possession and for the same a tripartite agreement was signed on 21.11 2013 which had initial term of 2 years which was to be done till possession with the funding bank by the respondent. But the EMIs are being debited from complainant's account from December, 2016.
10. Further the respondent has irregularly credited EMI to complainant's account till October, 2017 which can attract income tax to the complainant as he falls under 30% bracket. Also from November, 2017 onwards there has been no reversal by the respondent.
11. The complainant visited the site and found that construction work was not going on as per the commitments given by the respondent. The complainant has adhered to all payment



related formalities and there has been no breach of contract by the complainant. Before sending the legal notice.

12. All the requisite documents including builder buyer agreement were signed under protest and without prejudice to the rights of complainant as the respondent raised the demand but shared the documents for disbursement after a delay of 8 days as the complainant kept requesting the respondent to extend the date of disbursement so that the documents including builder buyer agreement can be read and understood by the complainant.

11. ISSUES RAISED BY THE COMPLAINANT

The following issues have been raised by the complainant:

- i. Whether the complainant is entitled for refund of his entire deposited amount due to non-delivery of possession?
- ii. Whether the complainant is entitled for refund of EMIs debited from his account?
- iii. Whether the complainant is entitled for Rs.98,706 i.e., 30% tax rate on EMI amount unilaterally credited into the complainant's account?



- iv. Whether the complainant is entitled for interest @18% p.a. on the deposited amount with the respondent?

12. RELIEF SOUGHT BY THE COMPLAINANT

The complainant is seeking the following reliefs:

- i. The respondent be directed to refund a sum of Rs 36,58,724/- along with interest @18% p.a
- ii. To direct the respondent to cancel all demands raised post the submission of legal notice.
- iii. To direct the refund of Rs.1,27,953 for reimbursement of EMIs debited from complainant and Rs.98,706 as 30% tax unilaterally credited by the respondent.
- iv. The foreclosure charges, if any, to be levied by HDFC bank ltd. Rs.3,24,000 for rent paid by the complainant, Rs.1,08,000 for facilities, lifestyle and secured environment, and Rs.75,000 for legal expenses.
- v. Any other order this hon'ble authority deem fit to meet the ends of justice.



RESPONDENT'S REPLY

13. The complainant has not approached this authority with unclean hands as it has failed to disclose material particulars.
14. The complainant approached the respondent on his own to book the apartment and vide mail dated 30.7.2013, the respondent mentioned about discounts being offered by various real estate agents and accordingly negotiated with the respondent for a discount of 4%. The complainant is an investor and has booked the unit in question to yield gainful returns by selling the same in the open market.
15. The complainant has misrepresented that he was not given proper opportunity to go through buyer's agreement. Vide mail dated 19.11.2013, the complainant has duly acknowledged the receipt of the copies of the buyer's agreement. The complainant mentioned under protest only for the fact that respondent did not allow extension of due date by 8 days. The complainant also had knowledge of the terms and conditions of the allotment which shows that the complainant are presenting wrong and distorted facts.



16. Further, there is not a single document exchanged between the parties which mentions that the pre-EMI interest shall be directly paid to the bank by the respondent. The complainant has alleged that the pre-EMI interest has been deducted from complainant's account since December, 2016 but have maintained silence of the fact that the respondent has been crediting the said deductions in the account of the complainant.
17. The complaints have alleged that they have paid an amount of Rs. 36,58,724.09/- whereas, out of the total amount, the complainants have only paid Rs. 14,65,292.09/- whereas, HDFC's contribution is Rs. 17,69,749/- and the respondent has adjusted towards pre-EMI an amount of Rs. 8,49,030.
18. It is submitted that at the time of signing the agreement the complainants had knowledge that there may arise a situation whereby possession could not be granted as per the commitment period and a remedy under clause 6 was provided. So, the complainant cannot go beyond the same.
19. Section 74 of the Indian Contracts Act clearly spells out the law regarding sanctity and binding nature of the ascertained



amount of compensation provided in the agreement and further specifies that any party is not entitled to anything beyond the same.

20. As per section 13 of RERA, the agreements that were executed prior to the registration of the project under RERA shall be binding on the parties and cannot be reopened. Further, the applicant is in breach of the agreement for non-invocation of the arbitration clause i.e. clause 16 of the buyer's agreement.

DETERMINATION OF ISSUES

21. After considering the facts submitted by the complainants, reply by the respondent and perusal of record on file, the issue wise findings of the authority are as under:
22. With respect to the **first and fourth issue** raised by the complainants, as per clause 1.4 and 5.1 of buyer's agreement,

"36 months from the execution of floor buyer's agreement + grace period of 180 days"

The possession of the unit was to be handed over within 36 months plus grace period of 180 days from the date of execution of the said agreement. The buyer's agreement was executed on 21.11.2013. Therefore, the due date of possession shall be computed from 21.11.2013.



23. Accordingly, the due date of possession was 21.5.2017 and the possession has been delayed by 1 year 8 months 17 days till date. As the respondent has failed to fulfil his obligation under section 11(4)(a), therefore the promoter is liable under section 18(1) proviso read with rule 15 of the rules ibid, to refund the amount paid by the complainant after deducting 10% BSP. The amount shall be refunded to the complainant along with interest at prescribed rate i.e. 10.75% per annum from the date of receipt of payments.
24. With respect to the **second issue**, the respondent shall refund the pre EMIs which have been paid by the buyer on account of default on the part of respondent.
25. With respect to the **third issue**, the issue relating to refund of tax at 30% the authority is of the view that the complainant may approach the competent authority with respect to income tax.

FINDINGS OF THE AUTHORITY

26. The application filed by the respondent for rejection of complaint raising preliminary objection regarding jurisdiction of the authority stands dismissed. 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. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Department of Town and Country Planning, 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.

27. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.
28. The complainant requested that necessary directions be issued to the promoter to comply with the provisions and fulfil obligation under section 37 of the Act.
29. Local Commissioner was appointed vide order dated 15.1.2019 and as per the report given on 4.2.2019 50% of the work is complete. Also, the internal development work in the surrounding area of this colony has been completed about 60%.



30. Since the project is not registered, as such, notice under section 59 of the Real Estate (Regulation & Development) Act, 2016, for violation of section 3(1) of the Act be issued to the respondent. Registration branch is directed to do the needful.
31. As per clause 1.4 of the BBA dated 21.11.2013 for unit No.D-58-SF in project "Pedestal" Sector-70A, Gurugram, the possession of the booked unit was to be handed over to the complainant within a period of 36 months from the date of execution of BBA + 6 months grace period which comes out to be 21.5.2017. However, the respondent has miserably failed to deliver the unit to the complainant in time. The complainant on account of his pitiable financial condition is not in a position to pay the balance amount to the respondent in order to take over the possession of the unit.
32. A tripartite agreement was signed inter-se the buyer, respondent and HDFC Bank on 21.11.2013 under the subvention scheme. According to the terms and conditions of tripartite agreement, pre-EMIs till the offer of possession was to be borne by the respondent. However, on failure of the respondent to pay the pre-EMI amount, HDFC Bank debited the pre-EMI amount from the account of the complainant.



33. Considering the facts and circumstances of the matter and consent of the complainant to forgo 10% of the basic sale price towards earnest money, the authority is of the considered opinion that complainant is entitled to get back the deposited amount with prescribed rate of interest after deduction of 10% of earnest money. Accordingly, the respondent is directed to refund the deposited amount after deduction of 10% of earnest money, along with pre-EMIs paid by the complainant. A statement of accounts duly signed by both the parties has been placed on record, the payable amount is as under:-

Amount paid by the complainant	Rs.14,65,292/-
Amount paid by HDFC bank	Rs.21,93,432/-
Pre-EMI due	Rs.2,74,185/-
Amount to be deducted @ 10% of BSP	Rs.8,12,495/-

DECISION AND DIRECTIONS OF THE AUTHORITY

34. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following directions to the respondent in the interest of justice and fair play:



- (i) Respondent will refund the amount paid by the complainant after deducting 10% of BSP
- (ii) The respondent will settle the matter w.r.t. pre-EMIs under the subvention scheme with HDFC bank.
- (iii) The respondent will refund the pre-EMIs amount which have been paid by the buyer on account of default on the part of respondent.
- (iv) The amount shall be refunded to the complainant along with interest @ 10.75% from the date of receipt of payments.
- (v) The matter shall be settled within 90 days from the date of this order.

35. The order is pronounced.

36. Case file be consigned to the registry.



(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

(Subhash Chander Kush)

Member

Dated: 7.2.2019

Judgement uploaded on 26.02.2019