

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

**Complaint no. : 761 of 2018**  
**First date of hearing : 29.01.2019**  
**Date of decision : 04.04.2019**

Mr. Sandeep Kumar  
R/o House no. S 26,  
Uppal Southend,  
S block, Sector 49, Sohna Road, Gurugram.

**Complainant**

Versus

1. M/s BPTP Pvt. Ltd.  
Address: 28, ECE House, 1<sup>st</sup> floor, KG Marg,  
New Delhi: 110001.
2. M/s Native Buildcon Pvt Ltd.  
Address: BPTP Crest House, Plot no 15,  
Udyog Vihar  
Phase IV, Gurugram, Haryana.
3. M/s Countrywide Promoter Pvt Ltd  
Through its managing director,  
M-11, Middle Circle, Cannaught Circus,  
New Delhi.

**Respondents**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Subhash Chander Kush

**Chairman  
Member**

**APPEARANCE:**

Ms. Pallani Parmar  
Shri Shashank Bhushan and  
Ms. Bharti Singh

Advocate for the complainant  
Advocates for the respondents

## ORDER

1. A complaint dated 28.08.2018 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. Sandeep Kumar against the promoter M/s BPTP Pvt Ltd. and others, on account of violation of the clause 1.4, 1.5 of floor buyer's agreement executed on 16.12.2013 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. Since the floor buyer's agreement was executed on 16.12.2013 i.e. 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 obligations on the part of the respondent 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	Pedestal, Sector 70 and 70A, Gurugram
2.	Project area	102.2 acres

3.	DTCP license no.	15 of 2011 dated 07.03.2011
4.	Registered/Unregistered	<b>Not registered</b>
5.	Allotment letter	12.11.2013
6.	Date of execution of floor buyer's agreement	16.12.2013
7.	Residential floor space/unit no.	D-50C-FF, 1 <sup>st</sup> floor
8.	Unit measuring	1430 sq. ft.
9.	Payment plan	Construction linked (Subvention plan)
10.	Total consideration amount as per statement of account dated 24.10.2017	Rs. 1,28,71,504/-
11.	Total amount paid by the complainant as per statement of account dated 24.10.2017	Rs. 52,38,119/-
12.	Due date of delivery of possession as per clause 1.4 read with 5.1 of floor buyer's agreement i.e. 36 months from the execution of floor buyer's agreement i.e. 16.12.2013 + grace period of 180 days	16.06.2017
13.	Delay in handing over possession till date of decision	1 year 9 months 19 days
14.	Penalty clause 6.1 of floor buyer's agreement	Delay up to: For first 6 months: Rs 10 per sq. ft. per month of the super build up area of the unit Thereafter for 6-12 months: Rs 20 per sq. ft. And for more than 12 months: Rs 30

4. The 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 floor buyer's agreement dated 16.12.2013 is available on record for the aforesaid unit according to which the possession of the same was to be delivered by 16.06.2017. Neither the respondent has delivered the possession of the said unit as on date to the complainants nor they have paid any compensation on account of delay in handing over possession as per clause 6.1 of the said agreement duly executed between the parties. Therefore, the promoter has not fulfilled his committed liability as on date.

5. Taking cognizance of the complaint, the authority issued notices to the respondents for filing reply and for appearance. The case came up for hearing on 29.01.2019. The respondents through its counsel appeared on 29.01.2019, 28.02.2019. The reply filed on behalf of the respondent has been perused by the authority.

**BRIEF FACTS:**

6. Briefly stated, the complainant booked a residential flat in the project of the respondent namely "Pedestal" and the promoter represented to the complainant that it is developing the project through its 100% subsidiary named M/s Native Builcon Pvt. Ltd. and M/s Countrywide Promoters

Pvt. Ltd. and others. The complainant was induced to booked the above flat by showing brochures and was represented that all necessary sanctions and approvals have been obtained to complete the said project.

It was represented that the respondent has tied up with banks to provide benefit of subvention scheme with “No EMI till possession” payment plan.

7. The complainant submitted that the respondent has a team of marketing experts to lure the customers and induce them to purchase flats in its project by resorting to deceit and fraudulent representations and giving false hopes. The complainant was asked to pay 15% earnest money upfront for being eligible for subvention scheme.
8. The complainant submitted that net cost of the unit was Rs 11,351,757/- and a total payment of Rs 19,38,316/- was to be made by 30.10.2013 to be eligible to book a flat in the project. The payments were subsequently made.
9. The subvention agreement was signed around the same time wherein the bank agreed to give loan of almost 80% of the amount of Rs. 11,351,757/- amounting to Rs. 90 lakhs and though the interest was to be paid by the builder. But the catch in this arrangement was revealed later on that loan was

in the name of the buyer so the EMI was getting deducted from the complainant's accounts and company agreed to refund it later.

10. The complainant submitted that the possession should have been given within 36 months from the buyer's agreement and promoter company was paying interest only for 3 years, whereas the bank was deducting advance interest from start of loan till it ends, from the loan amount being disbursed which was to be adjusted.
11. The complainant was further induced to sign a pre printed flat buyers agreement dated 16.12.2013 and a unit bearing no D-50C-FF admeasuring 1430 sq. ft. was allotted to him. Further demand was raised for Rs. 32,47,940 on 13.03.2014 and the payment was made by the bank with interest set off by the builder which was supposed to pay interest to the bank till possession.
12. As per clause 1.4 of the floor buyer's agreement, the possession was to be handed over within commitment period of 36 months of signing the floor buyers agreement with a grace period of 180 days. In the instant case, counting 36 months from December 2013, 36 months got over in December 2016 and grace period got over in June 2017 but

there was no indication of completion of the project at any point of time till date. The possession of the said unit has been delayed by the promoter.

13. After a delay of almost 1 year in the project completion the buyer has to chase the promoter for getting refund of the interest amount. The complainant has paid a total sum of Rs. 51,86,255/- towards the aforesaid residential flat in the project from July 2013 to March 2014 as and when demanded by the respondent towards the aforesaid residential flat in the project. The balance payment was to be made at the respective stages of construction as indicated in construction linked plan and at the time of offering of possession.
14. The complainant sent a legal notice on 05.05.2018 to the promoter proposing to terminate the buyer's agreement and seeking refund of his money but there has been no response till date.
15. The promoter has been delaying the refund of the interest due under the subvention scheme by almost 6-8 months every time. Considering the status of the project and delayed possession, the complainant is seeking refund of the amount invested by him

**ISSUES RAISED BY THE COMPLAINANT:**

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

- i. Whether or not the respondent is justified in delaying the construction and development of the project in question?
- ii. Whether or not the respondents are liable to refund the amount deposited by the complainant along with interest at prescribed rate?
- iii. Whether or not the respondents have wrongly charged for car parking and development charges without even completing the project?

**RELIEF SOUGHT BY THE COMPLAINANT:**

17. The complainant is seeking the following reliefs:

- i. The respondent be directed to refund a sum of Rs. 51,86,255/- along with interest at prescribed rate from the date when payments were made till realization of the amount in full.
- ii. Any other order this hon'ble authority deem fit to meet the ends of justice.



**RESPONDENT'S REPLY:**

18. The respondent denied that it has issued advertisements in media including major newspapers regarding the project in question and correlated payment plan under “subvention scheme” with “no EMI till possession” or that the same has any relevance to the case at hand as the relation between the complainant and the respondents are governed on the basis of the terms and conditions of the application for allotment and subsequently, clauses of the duly executed floor buyer’s agreement
19. The respondent denied that the complainant became innocent victim of marketing gimmick or that the complainant was influenced by the rosy picture put forth by the representatives of the respondents or was induced to book a flat in the project in question of the respondents. It is further denied that the complainant was asked to make payment of 18% of purchase price before getting allotment in his name. It is submitted that the complainant, being an NRI and an investor, approached the respondents, through a broker namely, ‘*gupta promoters*’ after conducting due diligence, analysing the real estate market in the relevant geographical area and upon satisfying himself about the project in entirety and considering the same fruitful for his

investment, for applying for booking of a unit in the said project, 'pedestal' located at sector-70A, Gurugram. It is further submitted that the complainant by signing the provisional booking application form dated 19.07.2013 read, understood and agreed to all the terms and conditions in the booking application form and agreed to subvention payment plan under which the complainant was required to pay Rs.9,00,000/- on booking and further 15% of cost of property within 45 days of booking. Upon payment of Rs.9,00,000/- by the complainant, the respondents issued receipt dated 25.07.2013

20. The respondent denied that the net cost of the unit in question is Rs.1,13,51,757/- as the same can only be ascertained at the time of offer of possession on the basis of the final super area. It is submitted that the complainant was required to make payment as per the agreed payment plan.
21. As per agreed payment plan, respondents issued demand request dated 26.08.2013 upon reaching the milestone 'within 45 days of booking' for a sum of Rs. 10,38,316/- payable on or before 10.09.2013 which was not paid by the complainant within the stipulated time. Complainant made payment of the said amount after the due date and

accordingly, receipt dated 08.11.2013 was issued by the respondent.

22. It is clarified that as per the agreed payment plan/schedule, a provisional allotment cum demand letter dated 09.11.2013 in respect to the unit in question was issued by the respondents and vide the same letter, demand of Rs.3247940/- was raised by the respondents on completion of the milestone of “start of construction” which, as per the payment plan, was to be paid by the bank. Respondents also advised the complainants to get necessary documents executed with HDFC/ICICI to get disbursement under subvention scheme. Thereafter, respondents issued allotment letter dated 12.11.2013 to the complainant and tentatively allotted unit no. D-50C-FF under the subvention payment plan with a tentative area of 1,430 sq. ft.

23. Upon non-payment by the complainant for demand dated 09.11.2013 raised by the respondents upon reaching the milestone ‘at the start of construction’ respondents issued reminder notice dated 02.12.2013 for payment of the same.

24. Vide email dated 10.12.2013 sent to the complainant, it was duly informed by the respondents that builder buyer’s agreement was not received for execution. complainant was

also informed that demand dated 09.11.2013 was raised “at the stage of construction” with due date 30.11.2013 and till now builder buyer agreement and sanction letter for execution are not received.

25. Further, vide email dated 11.12.2013 complainant was intimated that documents received were incomplete and signature on stamp paper of builder buyer agreement and other such formalities are not completed which is leading to further delay in the whole process of submission of documents at the bank

26. The respondent denied that the buyer’s agreement was signed on a much later date or that there was any delay on the part of the respondents in getting the agreement executed. it is further denied that the respondents induced the complainant to sign a pre-printed flat buyer’s agreement dated 16.12.2013. It is submitted that the clauses of agreement are based on the terms and conditions of the application for allotment which the complainant agreed to before entering into any transaction with the respondents, therefore, the complainant had the knowledge of the clauses of the agreement at the time of booking only and did not object to the same at all. It is submitted that the allegations with regard to the clauses of the agreement raised by the

complainant at this belated stage is merely an afterthought in order to prejudice this hon'ble authority against the respondents

27. It is wrongfully alleged by the complainant that there was no communication between the parties in the year 2014 and 2018. It is denied that demand of Rs.32,47,940/- was raised by the respondents on 13.03.2014. It is further denied that the respondents are supposed to pay the interest to the bank till possession for delay on the part of the complainant in making timely payment of the instalments as and when demanded as per the agreed payment plan. It is further submitted that vide statement of account dated 13.03.2014 respondents updated the complainant about his account details which reflected due amount of Rs.32,47,940/- and it was also time and again reminded to the complainant via emails and reminder letters to execute all necessary documents with HDFC/ICICI to get disbursement under subvention scheme.

28. It is submitted that the complainant was constantly provided with construction updates by the respondents vide emails dated 23.08.2017, 20.09.2017 and 05.10.2017. Vide email dated 20.09.2017, the respondent duly informed the complainant that construction activities at the site are going

on in full swing and over 1000 workforce are working tirelessly across the township to complete the construction at the site

29. Payment request was sent by the respondent as per the agreed payment plan upon reaching the milestone 'on casting of first floor roof slab' for an amount of Rs.13,94,400.44 to be paid on or before 19.04.2018. However, the complainant failed to make the requisite payment till date. Respondent sent a reminder letter for payment of the previous outstanding amount of Rs.13,86,267.40/- to the complainant.
30. The contents of alleged legal notice are denied for being wholly misconceived, incorrect and in contravention to the agreed terms of the floor buyer's agreement
31. It is wrongfully alleged by the complainant that the respondents have been delaying the refund of interest due under subvention scheme by almost 6-8 months every time. The email dated 07.07.2018 annexed by the complainant contains incomplete, erroneous and baseless facts.
32. As per the agreed payment plan, respondent issued payment request upon completing the milestone 'on casting of second floor roof slab' for an amount of Rs.41,83,201.36/- to be paid on or before 24.07.2018. The respondent also demanded

payment of the previous outstanding amount of Rs.13,86,267. Vide email dated 04.11.2018, the respondents provided construction update to the complainant for the month till November, 2018

33. It is pertinent to mention that till date out of the total amount paid towards the unit in question, the complainant has only paid Rs.19,90,180/-, contribution by HDFC is Rs.26,94,869/- and respondents have contributed a total sum of Rs.14,34,491/- till date.

**DETERMINATION OF ISSUES:**

34. 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:

- i. With respect to the **first issue** raised by the complainant, as per clause 1.4 and 5.1 of floor buyer's agreement, 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 floor buyer's agreement was executed on 16.12.2013. Therefore, the due date of possession shall be computed from 16.12.2013. The relevant clause is reproduced as under:

***“Clause 5.1: the seller/confirming party proposed to offer possession to the unit to the purchasers within the commitment period. The seller/confirming party shall be additionally entitled to a grace period of 180 days after the expiry of the said commitment period for making offer of possession to purchasers.”***

Accordingly, the due date of possession was 16.06.2017 and the possession has been delayed by one year nine months 19 days till the date. The delay compensation payable by the respondent on account of delay in handing over possession by the due date as per clause 6.1 of buyer’s agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided and unilateral. It has also been observed in para 181 of ***Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

*“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”*



As the respondent has failed to fulfil its 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 pay interest to the complainant at prescribed rate i.e. 10.75% per annum for every month of delay till the handing over of possession.

- ii. With respect to the **second issue** raised by the complainant, as per report of local commissioner approximately 60% of the work is complete physically. Internal development works is approximately 65% complete. Thus refund shall not be granted at such a belated stage as granting the same will hamper the remaining work of the project and also hamper the interests of other allottees who wish to continue with the project.
- iii. With respect to the **third issue** raised by the complainant, as per clause 3(3.1)(B) and 3(3.1)(D) of the floor buyers agreement dated 16.12.2013, the complainant has agreed to the charges mentioned therein. Thus, the authority is of the view that since the agreement is signed by the complainant out of his own accord and free will, he is under a contractual obligation

to abide by the same. Thus he cannot raise this issue at such a belated stage.

**FINDINGS OF THE AUTHORITY:**

35. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2017 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.

36. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter under section 11 of the Act *ibid.*. 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.

37. The authority is of the considered opinion that it has been held in a catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.
38. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015***, it was held that the arbitration clause in agreements between the complainants and builders could not circumscribe jurisdiction of a consumer. This view has been upheld by the Supreme Court - in **civil appeal no.23512-23513 of 2017** and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.

39. The counsel for respondent prayed for supply of copy of report of local commissioner appointed in this complaint. Several times in the past, the respondent BPTP has been asked to get the project registered. Counsel for respondent informed the authority that structure is ready and it will be in a position to hand over the possession after obtaining occupation certificate within one year positively. Counsel for complainant also brought to the notice of the authority that he is suffering losses because of delay in handing over possession. Accordingly the complainant has been advised to approach adjudicating officer for adjudicating the component of compensation.
40. As per clause 1.4, 1.5 of the floor buyer agreement dated 16.12.2013 for unit no D-50C-FF in the project "Pedestal", Sector 70A, Gurugram, possession was to be handed over to the complainant within a period of 36 months from the execution of floor buyer agreement plus 180 days grace period which comes out to be 16.06.2017. However, the respondent has not delivered the unit in time. Complainant has already paid Rs. 52,38,119/- to the respondent against a total sale consideration of Rs. 1,28,71,504/-.

**DECISION AND DIRECTIONS OF THE AUTHORITY:**

41. 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 in the interest of justice and fair play:

- i. Complainant shall pay the outstanding dues, if any, after adjustment of interest for the delayed period.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.75% for every month of delay from the due date of possession i.e. 16.06.2017 till date of offer of possession.
- iii. The respondent is directed to pay interest accrued from the due date possession i.e. 16.06.2017 till date of order, on account of delay in handing over of possession to the complainant within 90 days from the date of decision.
- iv. Thereafter monthly interest shall be paid on 10<sup>th</sup> of every subsequent month.
- v. The promoter shall not charge anything from the complainant which is not a part of the builder buyer agreement.

- vi. Interest on the due payments from the complainant shall be charged at the prescribed rate of interest i.e. 10.75% by the promoter which is the same as being granted to the complainant in case of delayed possession.
42. 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.
43. The order is pronounced.
44. Case file be consigned to the registry.

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

**(Subhash Chander Kush)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.04.2019