

PROCEEDINGS OF THE DAY		25
Day and Date	Tuesday and 23.01.2024	
Complaint No.	CR/3383/2020 Case titled as Ashok Chopra VS BPTP Limited	
Complainant	Ashok Chopra	
Represented through	Complainant in person with Ms. Neelam Kathuria Advocate	
Respondent	BPTP Limited	
Respondent Represented	Shri Harshit Batra Advocate	
Last date of hearing	19.12.2023	
Proceeding Recorded by	Naresh Kumari and HR Mehta	
Proceedings		
The present complaint has been received on 26.10.2020 and the reply was received on 05.01.2021.		
Succinct facts of the case as per complaint and reply are as under:		
Sr. No.	Particulars	Details
1.	Name of the project	'Astaire Garden', Sector 70-A, Gurugram, Haryana.
2.	Rera Registered/Not Registered	Registered 912 Of 2021
3.	Unit no.	E-56-SF (on page no. 58 of complaint)
4.	Unit admeasuring	1090 sq. ft. (on page no. 58 of complaint)



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CR/3383/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. डी. विधाम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

5.	Date of execution of flat buyer's agreement	23.02.2012 (on page no. 48 of complaint)
6.	Building plan	03.05.2013
7.	Possession clause	Possession Clause (5.1): Subject to Force Majeure as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement, whichever is later "Commitment Period") The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace



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New PWD Rest House, Civil Lines, Gurugram, Haryana

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		Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc from DTCP under the Act in respect of the entire colony. (Emphasis supplied).
8.	Due date of delivery of possession	03.05.2016 (Calculated from the date of sanctioning of building plan as it being later)
9.	Total sale consideration	Rs 76,31,920/- (As per page no. 169 of reply)
10.	Total amount paid	Rs 54,19,209/- (As per page no. 169 of reply)
11.	Occupation certificate	16.09.2019 (As per page no. 166 of reply)
12.	Offer of possession	18.09.2019 (As per page no. 167 of reply)
13.	Conveyance deed	28.01.2020 (As per page no. 193 of reply)
14.	Grace period utilization	In the present case, the promoters are seeking a grace period of 180 days for filing and pursuing of occupancy certificate etc. from DTCP. As a matter of fact, from the perusal of occupation certificate dated 16.09.2019 it is implied that the promoters applied for occupation certificate later than 180 days from the due date of



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CR/3382/2020

New PWD Rest House, Civil Lines, Gurugram, Haryana

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		possession i.e., 03.05.2016. The clause clearly implies that the grace period is asked for filing and pursuing the occupation certificate, therefore as the promoters applied for the occupation certificate much later than the statutory period of 180 days, they do not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 03.05.2016.
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The counsel for the complainant is seeking delayed possession charges alongwith other reliefs as there was inordinate delay in handing over of possession from the date promised in the BBA. Further the undue charges on account of GST, VAT club charges etc. have been demanded for which the authority has constituted a committee by the authority and relief may be given in terms of recommendation of said committee. Further the acceptance of discount offer made by the respondent on 07.10.2019 was under duress and the builder has used dominant position and a meagre discount of only Rs.402150/- was extended to the allottee and not in terms of the due delayed possession charges provided u/s 18 of the Act. The authority in CR No.3058 of 2020 of Nitish Chhaparia has already taken a view and has allowed DPC after adjusting the amount paid as discount.

The counsel for the respondent states that although the title of the letter dated 07.10.2019 is only discount letter but in the 4th para of said discount letter, the allottee of his free will has agreed to the above discount amount and has waived off the future claims in respect of unit including the entitlement under the Act of 2016 and hence, the DPC may not be granted at this belated stage when possession has been handed over and CD has also been executed. Further the order of authority in Nitish Chhaparia is under challenged before the Hon'ble Tribunal and facts are also not similar. The counsel also states that besides the above amount mentioned in discount letter, an amount of Rs.3.44 Lakhs was also credited in account of the complainant as compensation and the Hon'ble SC in Civil appeal No.3302/2005 has held that

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण



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New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी. डब्ल्यू. सी. विभाग गृह, सिविल लाईन, गुरुग्राम हरियाणा

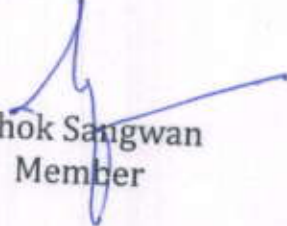
the nature and terms of the document are to be determined with the reference of terms of documents and not merely the title and captioned of the documents.

Both the counsels for the parties have already filed written submissions.

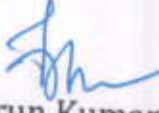
Arguments heard.

Order reserved.

Matter to come up on **02.04.2024** for pronouncement of order.


Ashok Sangwan
Member


Vijay Kumar Goyal
Member


Arun Kumar
Chairman
23.01.2024