



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: www.haryanarera.gov.in

**COMPLAINT NO. 480 OF 2021**

Chanda Modi

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 13.07.2022**

**Hearing: 5<sup>th</sup>**

**Present:** Shri Nitin Kant Setia, Ld. counsel for the Complainant through video-conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Ld. counsels for the Respondent.

**ORDER: (DILBAG SINGH SIHAG-MEMBER)**

While initiating his arguments ld. counsel for the complainant averred main facts of the case. Complainants booked a flat in respondent's project named 'Discovery Park, Faridabad, on 18.03.2011 after paying Rs. 2,23,429/-. Builder Buyer Agreement (BBA) for Flat No. A-406, 4<sup>th</sup> floor Tower-A with 1120 sq. ft. area was executed on 22.11.2012. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months,



which comes to 22.05.2016. Complainants also claimed that they have so far paid an amount of Rs. 37,62,919 /- against basic sale price of Rs. 29,06,400/-.

2. In support of the contention that complainant has paid an amount of Rs. 37,62,919 /-. He annexed receipts of payments of Rs. 35,18,683.85/- issued by the respondents in acknowledgement. Complainant has also annexed statement of accounts dated 14.05.2019 issued by the respondent showing an amount of Rs. 37,62,919.50/- received by respondent.

3. Complainant has prayed for refund of the amount paid by him along with permissible interest on the ground that respondents have delayed completion of project.

4. The respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Averments made by the respondents in their reply are summarized as follows:-

- i. Completion of the project has been delayed on account of certain force majeure conditions. NGT banned the usage of DG sets which are important for carrying out construction activities. Ground water usage was banned by NGT and it was directed that only recycled water be used for construction. Due to increase in AQI construction activities are put on hold for 3 months every year.



- ii. Work of the project is in full swing and is 60 percent complete. Possession of the unit will be handed over shortly.
  - iii. That Builder Buyer Agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.
  - iv. Complainant was duly informed about the status of construction via e-mail dated 1.08.2016, 18.10.2016, 22.12.2016, 16.03.2017 and 11.04.2017.
5. Both parties have argued their case at length. Complainant further stated that she did not wish to continue with the project. Accordingly, she press for refund of the amount paid by him along with permissible interest as applicable under the Rules.
6. Respondent on the other hand argued that construction was going on in full swing and 60 percent complete. Offer of possession would be made soon after completion of the project.
7. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides while observing and orders as follows: -





- i. There is no denial to the fact of Rs. 37,62,919 /- having been paid by the complainants to the respondents. Payment of this amount is further proved from the receipts of payments issued by the respondent.
- ii. Respondents admits that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion.
- iii. Declared policy of this Authority is that the complainants would be entitled to relief of refund in all such cases where projects is not complete, nor specific time period provided for its completion is given and extraordinary delay has already been caused from the due date of offer of possession, because they cannot be forced to wait for completion of project for endless period of time.
- iv. Respondent's arguments in respect of force majeure conditions also cannot be accepted as no such conditions have been shown to be applicable on due date of possession in 2016. Nothing extraordinary had taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now, nothing to have happened. Therefore, respondents are defaulting on multiple counts.
- v. One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of





RERA Act,2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, has been deciding disputes between builders and buyers strictly in accordance with terms of the provisions of Builder-Buyer Agreements.

In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other in regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts.



Subject to the above, argument of learned counsel for the respondents that provisions of agreement are being altered by Authority with retrospective effect, do not hold any ground.

- vi. In the instant case, however, relief of refund has been sought. Refund in this case is admissible as respondents have neither completed the project nor have given any time frame within which it will be completed. This is a case of breach of contract by the respondents. In case of breach of contract, his argument that provisions of RERA will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who has suffered on account of breach of contract. Provisions of agreement will not come into play when the contract is breached. The general law of the land will regulate such situation and not provision of the agreement.
- vii. Therefore, complainant being entitled to refund of the entire amount of Rs. 37,62,919 /- paid by him, Authority orders refund of the amount of Rs. 35,18,683.85/- (Receipts received for the same) along with interest from the date of receipt of payment till date of this order. On remaining

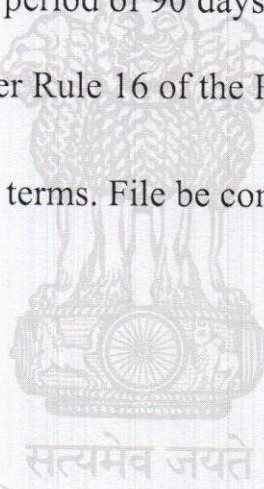




amount of Rs. 2,44,235.65/- interest will be calculated from 14.05.2019  
(Date of issuance of statement of accounts).

- viii. Total interest for the period ranging from the date of receipt of payments to date of passing this final order (13.07.2022) in terms of Rule 15 of HRERA Rules,2017 i.e., @ 9.70% payable by the respondents to the complainants works out to Rs. 25,09,722/-.
- ix. Authority hereby orders that the respondents shall refund the principal amount of Rs. 37,62,919/- plus interest amount of Rs. 25,09,722/- to the complainant, within a period of 90 days of uploading of this order i.e., the period prescribed under Rule 16 of the RERA Rules, 2017 12.

**Disposed of** in above terms. File be consigned to record room.



.....  
**RAJAN GUPTA**  
**(CHAIRMAN)**

.....  
**DILBAG SINGH SIHAG**  
**(MEMBER)**