



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1407 OF 2020

Sanjay Kumar Arora

....COMPLAINANTS(S)

VERSUS

BPTP Limited

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 13.07.2022

Hearing: 4th

Present: Shri Rishabh Jain, Ld. counsel for the complainant through VC.

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

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his arguments, ld. counsel for the complainant briefed major facts of the case. Complainant booked a unit in the respondent's project "Discovery Park" Sector 80, Faridabad on 04.11.2011 after paying an

amount of Rs. 2,14,872/-. He was allotted office Unit No. B-1006 with tentative area of 1120 sq. ft. on 15.12.2011. Buyer Agreement (BBA) was executed between complainant and respondent on 13.02.2013. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to be 13.08.2016. Complainant had paid an amount of Rs. 11,86,880/- against basic sale price of Rs. 29,84,800/- till 23.11.2013. Construction of the project is halted midway by the respondent.

2. In support of the contention, complainants have submitted receipts of payments issued by the respondents apart from acknowledgement of said amount by the respondent.

3. Complainant has prayed for refund of the paid amount by him along with permissible interest on the ground of already inordinately delay in completion of the project.

4. Respondent has sought to defend themselves in broad and general terms without giving specific reply to any of the averments made by the complainant while submitting his following reply: -

(i) 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.

(ii) Complainant has not paid various demands dated 30.09.2013, 29.07.2015, 11.04.2017, 12.05.2017, 19.09.2017, 28.10.2017 and 05.02.2018. Therefore, complainant is a defaulter under section 19(6) and 19(7) of the Act.

(iii) Possession of the plot was dependent on the force majeure circumstances and timely payment of each instalment.

(iv) Construction of the project is going on and is 80 % complete. Possession will be handed over after completion of construction. It got affected due to NGT orders prohibiting construction activity and Covid-19.

(v) Complainant has not made payment of Rs. 26,50,569.69 till today.

5. Both parties have argued their case at length. Complainant does not wish to continue with the project any more. Accordingly, he presses for refund of the amount paid by him along with interest as applicable under the Rules.

6. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides while observing and issuing following orders: -

(i) Basic facts of the matter are undisputed regarding allotment of the apartment to complainants on 15.12.2011, execution of builder, buyer

agreement between the parties on 13.02.2013. It is evident from receipts of payments issued by the respondent that complainants have made payment of Rs. 11,86,880/- to the respondents. Respondent has stated that construction is 80 percent complete however no specific timeline has been given for completion of construction.

(ii) Declared policy of this Authority in all such cases where projects are not complete nor likely to be completed within foreseeable future and extraordinary delay (5 years or more) has already been taken place from the due date of offer of possession, then complainants are entitled to relief of refund on the ground that they cannot be forced to wait for completion of project for endless period. Besides offer of alternate unit cannot be forced upon the allottees against their will.

(iii) 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 would be regulated by the agreement previously executed between them and same could not 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.

Moreover, 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.

- (iv) In the instant case, relief of refund has been sought. That is absolutely admissible on the very ground of inordinate delay in completion of the project by the promoter/respondent. This is a case of

breach of contract by the respondents. In case of breach of contract, his pleading 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 is a sufferer 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.

- (v) In view of above facts, it has been observed by the Authority that by virtue of section 18 of RERA Act, 2016, allottee is within his right to ask for refund when unit is not ready and no timeline is committed by respondent for handing over of possession. Allottee cannot be forced to wait for an indefinite period for possession of booked unit. So, Authority deems it a fit case for allowing relief of refund. Accordingly, Authority grants relief of refund of paid amount to the complainants along with interest as per Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR+2% (9.70%) from the respective dates of making payment till the actual realization of the amount.



