



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 705 OF 2021

Arun Bhaduria and Neelam Singh and Kajal Singh ...Complainant

Versus

M/s B.P.T.P. Ltd. ...Respondent

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of hearing: 13.07.2022

Hearing: - 12th

Present: - Mr. Rishi Kapoor, Ld. counsel for the Complainant through VC.

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

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his arguments, ld. counsel for the complainant briefed major facts of the case. He submitted that complainant booked a unit in

the respondent's project "The Deck" Sector 82, Parklands on 19.03.2012 after paying an amount of Rs. 7,50,000/-. He was allotted unit No. N-804 with area(tentative) of 3061 sq. ft. on 03.04.2012. Buyer Agreement (BBA) was executed between the complainant and respondent on 31.10.2012. In terms of clause 5.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to be 31.06.2016. Complainant had paid an amount of Rs. 1,50,34,853/- against basic sale price of Rs. 1,48,45,850/-.

2. In support of the contention, complainants have submitted a statement of accounts dated 12.03.2014 wherein an amount of Rs. 1,41,14,554/- is shown to have been paid. No proof has been submitted for an amount of Rs. 9,20,299/-.

3. Complainant has prayed for refund of the paid amount by him along with permissible interest on the very 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 respondent's project 'The Deck' is a registered project bearing registration no. 183 of 2019 valid till 31.12.2022.

(ii) Complainant has made defaults in making payments and is a defaulter under section 19(6) and 19(7) of the Act.



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

(iv) Work of the project is going on and possession will be handed over shortly.

5. Both parties have argued their case at length. Complainants do not wish to continue with the project any longer. Accordingly, they press for refund of the amount paid by them 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 that apartment was allotted to the complainants on 30.04.2012. Builder buyer agreement was executed between the parties on 31.10.2012. It is evident from statement of accounts issued by the respondent that complainants have made payment of Rs. 1,41,14,554/- to the respondents. Respondent has stated that construction is going and possession will be offered shortly. Nothing has been stated with regard to stage of construction by the respondent. No specific time period has been committed for completion of the project. 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 lapsed 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.

(ii) In the instant case, relief of refund has been sought. That is absolutely admissible on the 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 the 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.

(iii) Complainant has not annexed any receipt of payment and is relying on statement of accounts dated 12.03.2014. An email dated 01.08.2022 was sent to the complainant for submission of payment receipts by the complainant. Complainant chose not to file any such receipts. Therefore, the case is now being decided on the basis of best evidence placed on record by the respondent. After perusing the written statement filed by the respondent it is revealed that respondent has annexed receipts of payment for an amount of Rs. 1,26,85,740/-. Interest will be given on this

amount from the date of payment till the date of order. On an amount of Rs. 14,28,814/- (1,26,85,740 - 1,41,14,554) interest will be given from the date of statement of accounts dated 12.03.2014. Complainant alleges that he has paid an amount of Rs. 1,50,34,853/- but no proof has been given for the amount over and above Rs. 1,41,14,554 and therefore no refund or interest will be allowed for any amount above Rs. 1,41,14,554/-


(iv) 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.

(v) In furtherance of aforementioned observations, Authority directs the respondent to refund the entire principal amount of Rs. 1,41,14,554/- to the complainant.

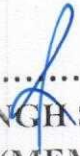
(vi) Now, respondent has to pay total amount of Rs. 1,41,14,554/- + ₹ 1,26,75,846/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.



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



RAJAN GUPTA
(CHAIRMAN)



DILBAG SINGH SIHAG
(MEMBER)

