



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 942 of 2021

Anuj Garg

...Complainant

Versus

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

M/s Countrywide Promoters Pvt. Ltd.

...Respondents

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of hearing: 26.07.2022

Hearing: - 12th

Present: - Ms. Navneet, Counsel for the Complainant through video- Conferencing.

Mr. Hemant Saini and Mr. Himanshu Monga, Counsel for the respondent.

ORDER: (RAJAN GUPTA- CHAIRMAN)

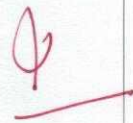
1. Case of the complainant is that original allottee Ms. Promila Arora booked an apartment in respondent's project named 'Park 81, Faridabad, on

25.09.2009 by paying an amount of Rs. 3,00,000/-. Allotment letter for the flat bearing no. VL1-15-FF, with 1402 sq. ft. area was issued by respondents in his favour on 16.03.2010. Allotment of said unit was endorsed in favor of present complainant Mr. Anuj Garg on 29.04.2010. Complainant had opted for construction linked plan. Builder Buyer Agreement (BBA) was executed between the complainant and respondents on 11.01.2012. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to 11.07.2015. Complainant has paid an amount of Rs. 27,55,419.1/- against basic sale price of Rs. 30,74,012/-.

2. In support of the contention that complainant has paid an amount of Rs. 27,55,419.1/- the complainant has submitted receipts of payments issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged.

3. The complainant further alleges that project is still not complete. In fact, it is far from completion and there is no sight of its completion in foreseeable future. Complainant has prayed for refund of the amount paid by him along with interest for the reason that respondents have already inordinately delayed completion of project and even now there is no hope of its completion in near future.

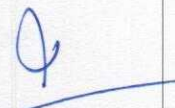
4. Respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by



complainant. Averments made by the respondents in their reply are summarized as follows: -

- (i) Since the unit in question is being constructed over plot area measuring 130.25 sq. mtrs. As per section 3(2)(a) of RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 sq. meters.
- (ii) 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.
- (iii) Construction of the project was going on in full swing however it got affected due to NGT orders prohibiting construction activity and Covid-19. Possession timelines have been diluted for reasons beyond control of the respondent.
- (iv) Possession has been delayed due to force majeure and default in timely payment by majority of customers.
- (v) Respondents have applied for Occupation certificate on 12.10.2021 after completion of construction work and will issue possession letter after receipt of Occupation certificate.

5. Both parties have argued their case at length. Complainant reiterates that project is nowhere near completion and there is no hope of its



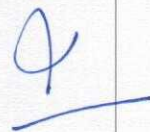
completion in near future, therefore, they do not wish to continue with the project any longer. Accordingly, they press for refund of the amount paid by them along with interest as applicable under the Rules.

6. Respondents on the other hand argues that construction is going on in full swing and an offer of possession will be made soon after completion of the project. They also argued that Respondents have applied for Occupation certificate on 12.10.2021 after completion of construction work and will issue possession letter after receipt of Occupation certificate.

7. On the last date of hearing, respondent was directed to submit correspondence undertaken with department with respect to grant of occupation certificate along with objections raised by department if any. Nothing has been submitted by respondent with respect to the same.

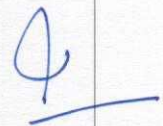
8. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides. It observes and order as follows: -

- i) There is no denial to the fact of Rs. 27,55,419.1/- having been paid by complainants to the respondents. Payment of this amount is further adequately proved from receipts of payments issued by the respondents to the complainant. The said receipts were submitted by complainant on 08.06.2022 in office and are made part of the record.



- ii) Respondents have submitted that construction of the project has been completed and they have applied for occupation certificate but no specific time period has been committed for offering possession to the complainant.
- iii) Possession of the apartment has not been offered to the complainant till date. There has already been inordinate delay of approx. 7 years. Section 18 of the RERA Act, 2016 gives choice to the allottee as to whether he wishes to stay with the project or withdraw from the project, and if he decides to withdraw from the project, he is entitled to refund along with delay interest.
- iv) 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.

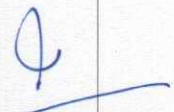
In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of Builder-Buyer Agreements.



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.

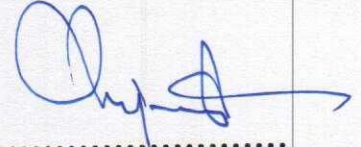
In the instant case, however, relief of refund has been sought. The refund in this case is admissible because respondents have not completed the project in time frame within which it was to be completed. This is a case of breach of contract by the respondents. In the case of breach of contract, argument 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 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) The complainants being entitled to refund of the entire amount of Rs. 27,55,419.1/- paid by them, Authority orders refund of the said amount along with interest from the date of receipt of payment till date of this order. The complainant has submitted receipts of the amounts of Rs. 27,55,419.1/- Accordingly, the calculations have been made by the Authority.
- vi) The total interest for the period ranging from receipt of payments to date of this final order (26.07.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e @ 9.80% payable by the respondents to the complainants works out to Rs. 26,72,790/-.
- vii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 27,55,419.1/- plus interest amount of Rs. Rs. 26,72,790/- 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.

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



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RAJAN GUPTA
(CHAIRMAN)



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DILBAG SINGH SIHAG
(MEMBER)

