



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 409 OF 2021

Saurabh Aggarwal

....COMPLAINANTS(S)

VERSUS

BPTP Parklands Pride Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.07.2022

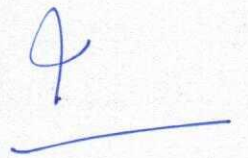
Hearing: 7th

Present: Shri Anshul Goel, Ld. counsel for Complainant through VC.

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

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainant is that he booked a flat in respondent's project named 'Parklands Pride, Faridabad, on 20.01.2019 after paying Rs. 2,00,000/-. He was allotted Flat No. PB-99, 2nd floor in the said project on 23.01.2019. As per said allotment letter dated 23.01.2019 complainant opted for possession linked plan. As per the said plan complainant was to submit an amount of Rs. 2,00,000/- at the time of booking and entire 100 % payment was to be made on offer of possession which was agreed to be made within 60 days of booking. Builder buyer agreement was not executed between the parties. He has so far paid an amount of Rs. 4,62,000/- against total sales price of Rs. 45,29,888.64/-(mentioned in the allotment letter at page 34 of complaint). Respondent sent a copy of builder buyer agreement on 31.01.2019 for execution but the same was not signed by complainant because price mentioned in the said agreement was not as per terms of booking and respondent was charging GST to which complainant did not agree. Possession was offered by respondent to him on 03.03.2019 wherein total sales consideration of Rs. 45,29,888.64/- was increased to 50,38,475/-. The additional amount of Rs. 5,43,586/- was charged on account of GST. Vide said offer complainant was asked to pay remaining consideration of Rs. 48,11,475/-.



2. Further facts of the case are that complainant alleges that he was told by respondent's representative that a dispute is going on with the contractor and work of the project is discontinued at site, therefore he may take an alternative unit PB-62-SF. Complainant agreed and sent an e-mail in this regard dated 25.03.2019 for change of his unit. Thereafter, respondent sent an e-mail dated 03.07.2019 for signing a fresh application form but complainant refused to sign the same.


3. Respondent sent a reminder letter dated 23.04.2019 and a final demand notice dated 17.08.2019 for payment of remaining dues of Rs. 48,38,475/- against the originally allotted unit (PB-99, 2nd floor). In response complainant sent an e-mail dated 09.09.2019 stating that his unit was promised for delivery in March 2019 and the same is still not ready therefore he seeks refund of Rs. 4,62,000/- paid by him. Thereafter, respondent terminated the complainant's unit on 06.11.2019 and two cheques of Rs. 1748/- after deducting earnest money were issued in his favour. However, those cheques were not accepted by the complainant.

3. Feeling aggrieved, present complaint has been filed by the complainant for refund of the amount paid by him along with permissible interest.

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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) That respondent's project 'Parklands Pride' is a registered project bearing registration no. 187 of 2019 valid till 31.12.2022.
- (ii) Payment of Rs. 4,62,000/- has been accepted by respondent.
- (iii) Possession was offered on 03.03.2019 but complainant failed to make payments due to which his unit was terminated on 06.11.2019.
- (iv) With regard to GST, it is stated that total consideration of the unit is determined at the time of offer of possession. Further complainant agreed to pay GST as per clause 15 of booking form.
- (v) Possession was dependent on force majeure clause and timely payment of instalments. Further respondent has referred to clause 5 of the booking application wherein it is stated that possession will be offered in case of bank funding within 30 days of receipt of total price and in case of self-funding within 60 days from depositing the total price.
- (vi) Complainant has made default in making payments and is in contravention of section 19(6) and 19(7) of RERA Act.



(vii) Complainant was offered alternative unit on 01.08.2020.

5. Both parties have argued their case at length. Complainant further stated that he does not wish to continue with the project. Accordingly, he presses for refund of the amount paid by him without deducting any earnest money along with permissible interest as applicable under the Rules.

6. Both parties were directed to submit written arguments in the court. Complainant has submitted his written arguments on 18.07.2022. In said arguments following submissions have been made by the complainant: -

- (i) Vide e-mail dated 09.03.2019(Annexure-1 of written arguments), respondent assured the complainant that GST is not applicable for his unit but in the offer, letter dated 03.03.2019 Rs. 5,43,586/- has been charged on account of GST.
- (ii) Offer of possession dated 03.03.2019 was given without completing the basic structure and without obtaining occupation certificate from the concerned department.

7. Authority observes and decides as follows:

- (i) Complainant was allotted unit no PB-99, 2nd floor vide allotment letter dated 23.01.2019 for which possession was offered on 03.03.2019 but the complainant did not take possession and now he is taking the plea that some representative of the respondent informed him that unit is not ready.

With respect to this contention no document of communication has been placed on record. Authority cannot rely on the oral averments of the complainant. It is observed that complainant himself sent an e-mail dated 25.03.2019 for change of his unit but later on himself did not agree for acceptance of alternate unit. Complainant even did not respond to the reminder with respect to payments issued by the respondent on 23.04.2019 and final demand notice dated 17.08.2019. After affording sufficient opportunity for payment the respondent cancelled the unit vide termination letter dated 06.11.2019 and forfeited the amount of Rs. 4,58,504/-. For the remaining amount of Rs. 3496/- respondent issued two cheques of Rs. 1748 each. The complainant remained silent on this termination letter for more than a year. The complainant cannot take advantage of his own wrong and negligence as he himself did not come forward to discharge his part of contract. Total sales consideration was Rs. 45,29,888.64/- and the complainant has paid an amount of Rs. 4,62,000/-. Authority observes that respondent was justified in terminating the unit of the complainant as complainant failed to make payments. The only obligation which was left on the part of the respondent was to refund the amount paid by the complainant after deducting earnest money. RERA provides for Earnest money of 10% of



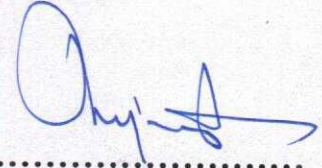
Basic cost price of the unit. This is also a standard market practice. Respondent can be allowed to deduct only 10% of basic sale price as earnest money and return remaining amount to the complainant. In this case agreement has not been executed however complainant claims that total sales price is Rs. 45,29,888.64/-. Earnest money of 10 % of the total sales price is liable to be deducted from the amount paid by the complainant which works out to be Rs. 452989/-.

(ii) Respondent is directed to refund of the amount of Rs. 9,011/- (4,62,000-452989). Authority orders refund of the said amount along with interest prescribed in Rule 15 of HRERA Rules,2017 for the period ranging from date of termination i.e., 06.11.2019 till date of this order.

(iii) The total interest for the period ranging from date of termination to date of this final order (07.07.2022) in terms of Rule 15 of HRERA Rules,2017 i.e. @ 9.70% payable by the respondents to the complainants work out to Rs. 2,335/- The Authority hereby orders that the respondents shall refund the principal amount of Rs. 9,011/- plus interest amount of Rs. 2335/- 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)

