



Complaint No. 625 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 625 OF 2018

SUNIL SHARMA

....COMPLAINANT

VERSUS

M/S BPTP LTD.

....RESPONDENT

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Date of Hearing: 10.04.2019

Hearing: 6th

Present: - Mr. Mukesh Verma, Counsel for complainant

Mr. Hemant Saini, Counsel for respondent

ORDER (RAJAN GUPTA- CHAIRMAN)

1. Complainant, while narrating his case, submitted that he had applied for allotment in respondent's "present and future" projects on 10.06.2009 and paid a sum of Rs. 2,50,000/- to the respondent. He was allotted an independent residential floor bearing no. L15-11-GF in L block having a tentative super built

up area of 1203 sq. ft. in the project named "Park Elite Floors" Parklands. Floor Buyer Agreement (herein referred as FBA) was executed between them on 09.03.2010 for the said floor. Further, an addendum was executed on 27.08.2010 whereby clause 4 and 5 of the said FBA was amended to the effect that possession will be handed over to the complainant within 24 months from the date of execution of the FBA or on completion of payment of 35% of the basic sale price along with 20% EDC and IDC by the complainant whichever is later, meaning thereby that deemed date of possession lapsed in Sep 2012 after allowing grace period of six months. The complainant had paid an amount of Rs. 26,36,760/- till date. Further, after waiting for almost 6 years, he received an offer of possession vide letter dated 12.01.2018 accompanied by certain additional demands on the pretext of GST, VAT, club membership, cost escalation , enhanced EDC, increase in area etc. The said letter also revealed that super area had been increased from 1203 sq. ft. to 1391 sq. ft.

Complainant, while objecting to the said offer of possession, visited the office of respondent and requested him to withdraw the said offer as the same was without completion certificate. He also objected to the additional demands made by

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the respondent as these were, according to him, illegal and unjustified.

2. When his objection remained unanswered, legal notices were sent twice to the respondent to withdraw the additional demands as well as the offer of possession which was made without getting the requisite occupation certificate. The respondent however kept sending him reminders for payment of dues. In such circumstances, complainant was compelled to file this complaint seeking withdrawal of the impugned offer of possession and the additional demands. Further, he is seeking interest on the deposited amount for the period of delay in handing over possession.

3. The respondent has denied all the allegations and raised several preliminary objections, as follows:

- i) The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present matter because the FBA was executed between the parties prior to coming into force of the Act, hence the agreements entered into between the parties shall be binding on the parties and cannot be reopened.
- ii) Further, the present complaint is not maintainable as the floor of the complainants is less than 500 sq. mts thus registration is not



required as per section 3(2) (a) of RERA Act, 2016. Even as per Guidelines for Registration of Independent floors for the Residential Plots of Licenced Colonies issued by financial Commissioner & Principal Secretary to Govt. Haryana Town & Country Planning Department dated 27.03.2007, registration of independent floors can be allowed in the case of residential plots of sizes 180 sq. yards or above and each such dwelling unit shall be designated as 'Independent Floor' which shall be recognized as a distinct, identifiable property with a separate identification number.

- iii) The respondent has also challenged maintainability of this complaint on the ground that the parties are bound to refer the matter for arbitration under clause 33 of the Flat Buyer Agreement, in case of failure to reach any amicable settlement amongst them, but in utter breach of the Agreement the complainants have directly filed the present complaint without even making any effort to settle the matter amicably.
- iv) The respondent has tried to explain the delay in offering possession by stating that building plans were withheld by the Town & Country Planning Department (hereinafter referred to as DTCP), Haryana despite the fact that these building plans were well within the ambit of building norms and policies. It was due to



the lack of clarity regarding the application of policy of self-certification to the developers/colonizers, the respondent had to submit the building plans for approval again under the public notice dated 08.01.2014 issued by the Town & Country Planning Department. Finally, the Department vide its order dated 08.07.2015, clarified that self-certification policy was also applicable to the cases of approval of building plans submitted by the respondent. Thus, the delay in offering possession to the complainants was due to inaction of the Government or its agencies and covered under force majeure clause 14 of the Agreement.

- v) The respondent further submitted that the complainants are also guilty of repeated defaults in making payment of instalments despite repeated reminders . Since timely payment was the essence of the contract, the complaint is liable to be dismissed on this ground alone.

4. Today, parties argued the matter and the complainant has prayed for fresh offer of possession along with delay compensation and rectification of the additional demands made by the respondent . To this, learned counsel for respondent stated that occupation certificate in respect of the unit in question has been



granted by the Town and Country Planning department on 7.09.2018 and respondent company is ready to offer possession after complainant clears his dues.

5. Parties have been heard and record has been perused. The Authority orders as follows: -

- i. First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the detailed orders passed by this Authority in complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd. The logic and reasoning in that complaint are fully applicable on the facts of this case as well. Since the core of the contract between the two parties still remains to be discharged, this Authority will have jurisdiction to entertain the complaint and settle the dispute.
- ii. The second challenge to the jurisdiction has been made on the ground that the floor area on which the floor to the complainant is allotted measures less than 500 sq. mts, thus, this project was not required to be registered therefore, the jurisdiction of this Authority does not extends to this case. This objection is totally devoid of merits because this plot/floor is a part of a larger colony



being developed by the respondent. The said plot/floor is not an independent project being developed by the respondent. Numerous such plots along with other buildings are being developed by the respondents as a part of this project and the license. Jurisdiction of the Authority is to be determined in respect of whole of the colony and not in respect of individual plots of the colony. For this reason the challenge to the jurisdiction is not acceptable.

- iii. The third objection has been raised that as per agreement the complainant was supposed to first refer the matter to the Arbitrator. This too is not acceptable because RERA Act provides for comprehensive remedies to the home buyers in the projects launched before coming into force of RERA Act as well as after coming into force of the Act. Wherever substantive obligations on the part of either of the parties still subsist, the Authority will have jurisdiction to deal with those matters to resolve them in a fair and just manner.
- iv. The issues pertaining to raising of demands on the pretext of cost escalation, GST, VAT, Service Tax etc have already been settled by this Authority in its judgement in complaint case no. 113 titled Madhu Sareen vs BPTP. The ratio of the said judgment shall be fully applicable on the facts of this case. Now, the respondent is



directed to issue a fresh statement of accounts containing receivable/payable in accordance with the principles laid down in the Madhu Sareen case. Further the issue pertaining to super area has been settled in a judgment passed by this Authority in complaint case no. 607 of 2018 titled Vivek Kadyan vs TDI and complaint no.22 of 2019 titled Parmeet Singh versus TDI Infrastructure Ltd. . The respondent shall re-calculate the super area in accordance with the principles laid down in the said judgments.

Now, a detailed statement shall be sent by the respondent to the complainant clearly specifying the size of carpet area; balcony area; each of the other common areas which put together comprises super area of the apartment

- v. With regard to the grievance concerning additional demand raised by respondent on the pretext of enhanced EDC, the Authority has observed in many cases that the same is not payable at present as the matter is pending adjudication before the Hon'ble High Court. However, the respondent shall be entitled to demand EEDC if and when it becomes payable as per decision of the Hon'ble High Court.
- vi. As far as club membership charges are concerned, it is directed that respondent is entitled to charge for club membership only



when club becomes functional. Further it is directed that if respondent has already collected money on account of club membership, same shall be refunded, and it would become payable only when club facility becomes functional .

- vii. The complainant wishes to remain in the project. He has been offered possession of the apartment but he has prayed for fresh offer of possession as the earlier offer was made without obtaining occupation certificate and accompanied by certain unjustified demands, now the respondent is directed to issue a fresh offer of possession within 30 days of uploading this order . Further, it is evident that there had been a delay of almost 6 years in delivery of possession thereby entitling the complainant to the compensation for such delay. So, respondent is directed to calculate the delay compensation payable to the complainant in accordance with the principals laid down in Madhu Sareen case i.e. @ SBI highest marginal cost of lending rate plus 2%. The views expressed by minority member in complaint no. 49 titled Parkash Chand Arohi versus Pivotal Infrastructure Pvt. Ltd. shall however remain applicable.

Now, along with fresh offer of possession, a statement of accounts shall be issued containing therein the amounts payable by the complainant to the respondent in accordance with the



abovesaid principles, and after duly adjusting the compensation payable by the respondent by the complainant for delayed offer of possession.

6. Lastly, the respondent was burdened with the cost of Rs. 9,000/- payable to the complainant and Rs. 24,000/- payable to the Authority. Out of this, he has deposited Rs. 20,000/- against cost payable to the Authority but remaining Rs.4,000/- is still unpaid. Further, the cost payable to the complainant has still not been paid. The respondent is directed to pay the same to the complainant and also to deposit the remaining cost payable to the Authority with one week of uploading of this order.

Case is disposed of in above terms. The order be uploaded on the website of the Authority and the file be consigned to the record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]