



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. 532 of 2018

Date of Institution: -11.09.2018

Date of Decision: - 09.03.2022

Jitender Kumar s/o Sh. Mahendra Singh, r/o # RZ-44 A/C Main Sagarpur, New
Delhi-110094

....COMPLAINANT

VERSUS

M/s BPTP Ltd, M-11, Middle Circle, Connaught Circus, New Delhi-110001

....RESPONDENT

Hearing:- 49th

Present: Mr.Jitender Kumar, complainant through Video conferencing
Ms. Srishti Girdhar Advocate, Counsel for the complainant
Mr. Hemant Saini Advocate, Counsel for the respondent

Srishti Gupta

JUDGEMENT:

The brief facts culminating into the institution of present complaint are:

1. The complainant had booked an independent residential floor in May, 2009 in respondent's project-'Park Elite Floors' situated in Faridabad, Haryana by paying ₹2,50,000/-. Allotment letter of unit to H-3-16 SF having super area of 1022 sq. ft. was allotted to him on 24.12.2009. Floor buyer agreement was executed between the parties on 28.09.2010 and in terms of clause 4.1 of it, possession was to be delivered upto 28.03.2013. An amount of ₹26,96,898/- has been paid against basic sale price of ₹20,55,999/-. For purchase of said unit, complainant has availed housing loan from HDFC Bank vide tripartite agreement dated 07.10.2011. Despite receiving 90% of total sale consideration within one year of date of booking, the respondent had delayed the project for a period of 9 years without any justification. Now complainant is facing financial stress as he neither owns the flat booked but has to pay rent along with EMI amount.
2. Feeling aggrieved present complaint has been filed seeking relief of refund of paid amount of ₹26,96,898/- along with interest @ 24% p.a. and compensation of ₹5,00,000/- for unfair trade practices, ₹5,00,000/- compensation for mental harassment and anxiety and ₹1,00,000/- towards reimbursement of legal expenses and ₹5,00,000/- as interim compensation.

3. Upon notice, respondent appeared through counsel and filed written statement taking preliminary objections that the complaint is liable to be dismissed for non-joinder of necessary party as property in question was jointly booked by complainant and co-applicant Ms. Sarita Rajput but co-applicant has not been joined as party to this complaint. It is admitted that possession was to be delivered within 24+6 months from the date of execution of floor buyer agreement, but the possession could be delivered only when the entire outstanding dues would be paid by the allottee on time. The delay was due to force majeure reasons which were beyond the control of the respondent. Since the unit in question is an independent residential floor being constructed over a plot area tentatively measuring 209.03 sq. mtrs., as per section 3(2)(a) of RERA Act, registration is not required. The complainant cannot seek to rely on provisions of RERA Act as the agreement was executed between respondent and complainant prior to coming into force of RERA Act. The agreement entered into between the parties shall be binding on all the parties and cannot be re-opened. The complaint is not maintainable as the parties had agreed under clause 33 of independent residential floor agreement to make an attempt to amicably settle the dispute, if dispute is not amicably settled, to refer the matter to arbitrator. Instead of doing this, complainant has approached this Hon'ble Court. The complainant has not approached the Court with clean hands and the complaint is liable to be dismissed for suppression of material facts. Respondent has provided additional incentives of ₹32,630.79/- as timely payment discount and ₹61,600/- as discount

on basic sales price and payment of only ₹22,88,544.51/- has been received by respondent. Delay caused in construction of the unit was beyond control of the respondent. Respondent had accepted the booking of the unit in question based on the self-certification policy issued by DTCP, Haryana.

4. On merits, it has been submitted that at the time of executing independent floor buyer agreement, the complainant was aware that the possession timeline was dependent on force majeure clause and timely payment of each instalment. It is denied that complainant is entitled to any refund or interest on the amount paid or compensation for delay in offering possession. Construction of the unit is going on in full swing and possession of the same will be offered soon to the complainant. Construction updates were duly shared with the complainant vide emails dated 28.07.2017, 18.08.2017, 09.12.2017, 24.02.2018, 25.03.2018, 10.04.2018, 10.05.2018, 16.06.2018, 10.09.2018 and 11.09.2018. The respondent has prayed for dismissal of the complaint.

5. Perusal of file reveals that initially when the complaint was filed, the complainant had sought relief of refund of paid amount of ₹26,96,898/- @ 24% p.a. and compensation of ₹5,00,000/- for unfair trade practices, ₹5,00,000/- compensation for mental harassment and anxiety and ₹1,00,000/- towards reimbursement of legal expenses and ₹5,00,000/- as interim compensation. On 17.12.2020 counsel for the complainant, vide email sent on official mail id of office, had restricted the present complaint only for relief of compensation by

withdrawing the relief of refund of paid amount. Accordingly, this complaint was proceeded with for relief of compensation only.

6. Arguments raised by learned counsel for the complainant are dealt with one by one.

7. The first ground on which compensation has been sought by the complainant is that since possession of independent residential floor in Park Elite Floors, Faridabad was not handed over to the complainant, which was to be handed over till 28.03.2013 the complainant had to stay in a rented house. The copy of first rent deed dated 02.04.2009 has been placed on the record. It is between Sachinand Jha as landlord and the complainant Jitender Kumar as tenant w.e.f. 01.04.2009 for 11 months. The rate of rent was ₹16,000/- per month. The address of rented house has been shown as flat no.B-203, Happy Homes Apartments, Plot no.12-A, Sector-7, Dwarka, New Delhi. The next copy of rent deed placed on record is dated 29.12.2014 between Smt. Sushila Devi and the present complainant Jitender Kumar w.e.f. 01.04.2014 to 31.03.2015 for a period of 12 months. The rate of rent has been mentioned as ₹39,000/- per month, two and a half floors have been rented out of the total premises. Address has been shown as RZ-49, Street no.1, East Sagarpur, New Delhi. On the same lines the copies of rent deeds dated 17.12.2015, 22.12.2016, 30.11.2017, 14.12.2019 and 24.07.2021 between the same landlady and the complainant of the same address have been placed on record. Rent deed dated 17.12.2015 is for the period of 01.04.2015 to 31.03.2016 for 12 months at monthly rent of ₹40,000/-, rent deed

dated 22.12.2016 for 12 months starting from 01.04.2016 at ₹40,000/- per month, rent deed dated 30.11.2017 for 11 months starting from 01.04.2017 at ₹65,000/- per month, rent deed dated 14.12.2019 w.e.f. 01.04.2019 for 11 months at monthly rent of ₹65,000/- and rent deed dated 24.07.2021 for a period of 11 months w.e.f. 01.04.2021 to 31.03.2022 at monthly rent of ₹65,000/-. It is the argument of learned counsel for respondent that Smt. Sushila Devi who has been shown as landlady of the present complainant Jitender Kumar is the real sister of Jitender Kumar. It has further been argued that no rent is being paid to Smt. Sushila Devi by Jitender Kumar and all these rent deeds and rent receipts have been fabricated by the complainant. It has also been pointed out by learned counsel for respondent that all the copies of rent receipts have not been placed on record by the complainant.

8. The first copy of rent deed which has been relied upon by learned counsel for the complainant is rent deed dated 02.04.2009. At this stage, it is relevant to mention here that in the present case the floor buyer agreement was executed between the parties on 28.09.2010. Possession of the independent residential floor was to be delivered upto 28.03.2013. The complainant is not entitled to any compensation for rent before 28.03.2013. Till the time possession was to be delivered by the respondent to the complainant, no rent deed or amount of rent paid by the complainant would be considered for computing compensation. Hence this rent deed is not being taken into consideration.

9. The next copies of rent deeds placed on record are rent deed dated 29.12.2014 for 12 months w.e.f. 01.04.2014 to 31.03.2015, rent deed dated 17.12.2015 w.e.f. 01.04.2015 to 31.03.2016, rent deed dated 22.12.2016 w.e.f. 01.04.2016 for 12 months, copies of rent deed dated 30.11.2017 starting from 01.04.2017 for 11 months, 14.12.2019 from 01.04.2019 for 11 months and lastly copy of rent deed dated 24.07.2021 starting from 01.04.2021 to 31.03.2022. There are many things which are common in all these rent deeds. In all these rent deeds, the landlady is Smt. Sushila Devi, real sister of the complainant Jitender Kumar and the same premises i.e. RZ-49, Street no.1, East Sagarpur, New Delhi has been rented out at different monthly rates of rent i.e. 39,000/-, 40,000/-, 40,000/-, 65,000/-, 65,000/-, 65,000/- respectively. Copy of rent deed dated 29.12.2014 shows that the stamp paper was purchased on 29.12.2014 but the rent deed relates to the period from 01.04.2014 to 31.03.2015. Similar practice is shown in all these copies of rent deeds. For rent deed dated 17.12.2015 stamp paper was purchased on 17.12.2015 but it relates back to 01.04.2015 to 31.03.2016. In the same manner for copy of rent deed dated 22.12.2016 stamp paper was purchased on 22.12.2016 but the rent deed is for the period 01.04.2016 for 12 months. Copy of rent deed dated 30.11.2017 shows that the stamp paper was purchased on the same date but the rent deed was prepared w.e.f. 01.04.2017. For copy of rent deed dated 14.12.2019 stamp paper was purchased on the same date but the period of rent deed is shown as 01.04.2019 for 11 months. Last copy of rent deed placed on the record is dated 24.07.2021 and the stamp paper was

purchased on the same date but the rent deed was incorporated for 01.04.2021 to 31.03.2022, though it has been shown for 11 months but the period is for 12 months. During the course of arguments it was specifically asked to complainant Jitender Kumar as to why at all times the stamp papers were purchased after a number of months when the rent deed had already commenced few months back. It was replied by him that sometimes the complainant was not available. The answer given by the complainant is not satisfactory, as all the times it is not possible that rent deed was starting from 1st April and the stamp paper was purchased in the month of either December or November, at the end of year. It appears that these rent deeds have been prepared later on after filing of the complaint and also during the pendency of the complaint. Otherwise it would not have happened that every time the period of rent deed had started w.e.f. 1st April and for a continuous period of 8 months, the complainant was not available. It shows that the stamp papers have been purchased in connivance with the stamp vendor and of whatever date they were available, they were purchased and rent deeds were prepared. The very first rent deed is dated 02.04.2009. It was with different landlord Sachinand Jha. It has different pattern. In that case stamp paper was purchased on 18.03.2009 and the rent deed was executed w.e.f. 01.04.2009 for 11 months. All the remaining rent deeds are having similar pattern in which the stamp papers are purchased after 7/8 months of execution of rent deeds. So far as rent deed dated 02.04.2009 is concerned, it is not to be taken into

consideration as any rent deed prior to 28.03.2013 would not be considered, when possession was to be delivered by the respondent.

10. So far as the copies of receipts placed on record by learned counsel for the complainant, for the period 01.04.2014 to 31.03.2015, no copy of receipt has been placed on the record. For next rent deed dated 17.12.2015, only 2 receipts in the sum of ₹39,000/- each dated 01.04.2015 and 01.05.2015 have been placed on the record, whereas in the copy of rent deed, the rate of rent has been mentioned as ₹40,000/- per month. Firstly remaining receipts have not been placed on the record and the amount in copies of 2 receipts does not tally with the rate of rent as agreed in rent deed. With regard to rent deed dated 22.12.2016, copies of only 2 receipts dated 03.04.2016 and 31.12.2016 have placed on the record which are in the sum of ₹40,000/- each. The copies of remaining receipts have not been placed on the record. With regard to rent deed dated 30.11.2017 only copies of 2 rent receipts dated 01.04.2017 and 01.12.2017 in the sum of ₹65,000/- each have been placed on record. There is no explanation with regard to remaining receipts. With regard to rent deed dated 14.12.2019, there are only 2 receipts dated 01.04.2019 and 01.12.2019 in the sum of ₹65,000/- each. There is no mention of remaining receipts. Learned counsel for the complainant has placed on record copy of judgment dated 04.08.2021 in Complaint no.664 of 2019 titled as Jitender Kumar v/s BPTP Pvt. Ltd. decided by Hon'ble Authority. In para no.5 of the said judgment, it has been mentioned that the valid offer of possession was sent on 16.09.2019 and the respondent had already obtained occupation certificate on

02.09.2019. Since it has come on record that the offer of possession was validly sent to the complainant on 16.09.2019, any rent paid after 16.09.2019 by the complainant would not be taken into consideration. Hence the copy of rent deed dated 24.07.2021 for the period 01.04.2021 to 31.03.2022 is not being taken into consideration, though learned counsel for the complainant has placed on record copy of receipt dated 01.04.2021 in the sum of ₹65,000/- and the second copy of receipt dated 01.07.2021 in the sum of ₹5,85,500/-. In the receipt dated 01.07.2021 in the sum of ₹5,85,500/-, the period has been shown from 01.07.2021 to 31.03.2022 @ ₹65,000/- per month. During the course of arguments, on being asked as to whether the said amount was withdrawn by the complainant from any bank account, the complainant has not given any satisfactory reply. He has admitted that the said amount was not withdrawn from any bank account, he has stated that some amount was paid in cash and some amount in kind. It is worthwhile to mention here that in none of the rent deeds, the complete receipts have been placed on the record. Out of 11/12 months, there are only 2 receipts for which there is no corresponding entry either in the bank or paid through cheque. Merely placing on record the copies of rent deeds is not sufficient. The proof of payment of rent is equally important, particularly when the landlady is the real sister of the complainant and in all the copies of rent deeds, the stamp papers have not been purchased prior in time. Copies of rent deed dated 02.04.2009 has been placed on record. The first page of the said copy shows that initially it was written 2009-2010, whereas after tempering, it has been made as 2009-2013, with the

sole intention to show continuity in rent deeds. In the body of rent deed, in para no.2 it has been mentioned that the period of rent agreed by both the parties in the first instance is w.e.f. 01.04.2009 for 11 months. The period of tenancy can be renewed further with mutual consent of both the parties in writing. Complainant has not placed on record any further renewal of the said agreement. He has forgotten that in the body of the document the period has been mentioned as 11 months and he has got tempered the record showing the document for 4 years i.e. 2009-2013. This is futile attempt on the part of the complainant.

11. During the course of arguments, it has been argued that the first and second floor of the building were rented out to the complainant and on the third floor Smt. Sushila Devi, landlady was residing. In every rent deed the portion under rent has been shown as two and a half stories, which does not correspond with the oral argument of learned counsel for complainant. In the same manner in copy of rent deed dated 14.12.2019, in the body of complaint the period has been mentioned as 11 months w.e.f. 01.04.2019 but on the first page of rent deed, it has been written 19-21, with the only purpose of showing continuity in rent deed as there is no rent deed for the year 2020. With these observations, it is held that the complainant is not entitled to any compensation on account of rent paid by him during the period possession was not delivered by the respondent to the complainant.

12. The next ground of compensation taken by the complainant is that his wife Smt. Sarita Rajput had suffered brain hemorrhage in the year 2016 because of

mental trauma faced by her as neither the amount paid by the complainant for the purchase of independent residential floor was paid back to the complainant nor possession of independent residential floor was handed over to him. Learned counsel for the complainant has placed on record copies of medical bills dated 21.03.2016 for an amount of ₹5,96,927/- issued by Lilavati Hospital and Research Centre and bill in sum of ₹25,991/- dated 22.06.2017 issued by Global Health Pvt. Ltd. Medanta Institute of Neurosciences. It is the argument of learned counsel for complainant that for the last 3 years wife of complainant is taking treatment for brain hemorrhage which she had suffered because of act and conduct of the respondent. The only medical bills placed on record are dated 21.03.2016 and 22.06.2017. The copy of document vide which the wife of complainant was admitted in Lilavati Hospital and Research Centre shows the date of admission as 21.03.2016 and date of discharge as 27.03.2016. In history of complaint, it is not mentioned that the wife of complainant was undergoing stress because of non-receipt of either money deposited by her husband or not receiving possession of independent residential floor. Since the document relates to the year 2016 and the present complaint has been filed in year 2018, the complainant has tried to connect the disease of his wife with mental agony and harassment suffered as the respondent had failed to offer possession of the floor. It seems to be after thought and the disease of wife of the complainant has not proved to have any nexus with the delay caused by the respondent in delivery of possession of the independent residential floor booked by the complainant. Hence

no compensation is being granted on account of medical treatment of wife of complainant.

13. During the course of proceedings a number of times allegations were levelled on the Court, one time saying that the copies of rent deeds were missing and later on counsel for the complainant levelled allegations that the copy of medical bill was missing. Every time the allegation levelled by the complainant or his counsel were found false, which have been separately recorded in interim orders.
14. At the time of filing of complaint, the complainant has stated that he had paid an amount of ₹26,96,898/- to the respondent till 30.05.2012, which has been rebutted by learned counsel for the respondent saying that amount of ₹22,88,544/- was deposited by the complainant with the respondent. Record shows that in copy of statement of account dated 02.03.2018, an amount of ₹23,21,175.3/- has been shown having been deposited by the complainant with the respondent. Meaning thereby the amount of ₹23,21,175.3/- was being used by the respondent till 16.09.2019 i.e. the date when valid offer of possession was made by the respondent. For all these $6\frac{1}{2}$ long years, the respondent had been utilizing the amount of ₹23,21,175.3/- paid by the complainant which can be termed as disproportionate gain to the respondent and loss to the complainant which can be further termed as a result of continuous default committed by the respondent. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default from 28.03.2013

(deemed date of possession) to 16.09.2019 (date of valid offer of possession) i.e., 6 years, 5 months and nineteen days. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6% per annum. In 2020 SCC online SC 667 titled as Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and others vs DLF Southern Pvt.Ltd., it has been observed by Hon'ble Apex Court in Para no.55 that

the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective apartments with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of occupation certificate.

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹22,97,469.3/-	28.03.2013 to 16.09.2019	6 %	8,92,803/-
₹23,706/-	15.12.2016 to 16.09.2019	6 %	3,920/-
Total-23,21,175.3/-			8,96,723/-

15. (i) Thus, the total amount of compensation under the head mental agony and harassment comes to ₹8,96,723/-. Under relief clause (c), the complainant has sought compensation to the extent of ₹5,00,000/- for mental harassment and anxiety. Since the complainant has prayed ₹5,00,000/- as compensation on account of mental harassment and anxiety,

amount more than ₹5,00,000/- cannot be granted to the complainant under this head. Hence, the relief of compensation under the head mental harassment and anxiety is restricted to ₹5,00,000/- only.

(ii) Under relief clause (a) initially the complainant had sought refund of ₹26,96,898/- along with interest @ 24% compounded annually. Later on vide email dated 17.12.2020 the relief of refund had been withdrawn by the complainant himself.

(iii) Under relief clause (b) the complainant had sought compensation of ₹5,00,000/- for unfair trade practices. It is relevant to mention here that the complainant has not proved any unfair trade practice committed by the respondent. Hence no amount of compensation is being granted to the complainant under this head.

(iv) Under relief clause (e) the complainant has sought interim compensation to the extent of ₹5,00,000/-. So far as the interim compensation is concerned, during the course of hearings/proceedings it was never demanded by the complainant nor was granted at any stage. Hence at the time of final disposal of the complaint, interim compensation cannot be granted.

(v) Under relief clause (d), the complainant has sought ₹1,00,000/- as reimbursement of legal expenses. It has been stated by the complainant that he had been paying ₹5,000/- per hearing to his counsel but the counsel for the complainant has not certified the same. No receipt or fee bill has been placed on the record. In the present case there were 49 hearings. In the absence of any such proof, the plea of the complainant is not admitted and a sum of ₹25,000/- is awarded as litigation cost.

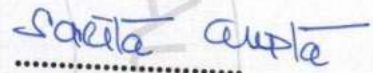
16. It is worthwhile to mention here that unit no. H-3-16 SF situated at Park Elite Floor, Faridabad is jointly owned by the present complainant Sh. Jitender Kumar and his wife Smt. Sarita Rajput. The complaint has only been filed by Sh. Jitender Kumar. It is relevant to mention here that no separate claim for

compensation would be entertained if Smt. Sarita Rajput co-owner chooses to file separate claim for compensation.

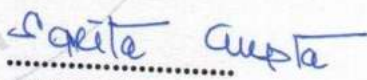
17. Sequel to aforesaid discussion, this complaint is partly allowed. Respondent is directed to pay an amount of (₹5,00,000 + ₹25,000) = ₹5,25,000/- (Rupees five lakhs and twenty-five thousand only) to the complainant in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of the amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

18. In these terms, the present complaint stands disposed of. File be consigned to record room after uploading order on the website of the Authority.

09.03.2022


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 16 pages and all the pages have been checked and signed by me.


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER