



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. -1968 OF 2019

Sanjay Chaudhary

...Complainant.

Versus

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

...Respondent.

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of hearing: 22.04.2022

Hearing: 12th

Present :- Shri Vivek Sethi, Counsel for the complainant through VC.

Shri Hemant Saini and Shri Himanshu Monga, Counsels for the respondent.

ORDER-: (RAJAN GUPTA-CHAIRMAN)

1. On the last date of hearing dated 29.03.2022 of this case a detailed and reasoned order was passed disclosing tentative view of the Authority. Said order is being reproduced for ready reference.

“Complainant’s case is that he was allotted a flat admeasuring 1107 sq. ft. in respondent project “Park Arena” Parklands in Sector 80, Faridabad on 07.09.2010. Flat buyer agreement for flat bearing no. A-602, 6th floor Tower A was executed between the parties on 30.07.2013. As per the said agreement possession of the flat was to be delivered within

36 months of booking or registration after adding grace period of 180 days. Basic sales price as per agreement was Rs. 30,44,250/-. Complainant had paid an amount of Rs. 30,95,990/- from 07.09.2010 till 16.08.2012. Complainant requested the respondent to offer him possession several times but complainant has come to know that construction of the project is stopped since 2015. He wrote an e-mail dated 10.08.2016 to the respondent asking for refund of the amount paid by him. Complainant had paid all the installments in time. Now, since no progress is being made even after lapse of nearly 10 years, complainant is demanding refund of the amount paid.

2. Complainant has prayed for relief of refund of Rs. 30,95,990/- and compensation at the rate of Rs. 5 per square ft for every month of delay, further compensation of Rs. 5,00,000/- for mental harassment and Rs. 10,00,000/- for deficiency in service and legal cost amounting to Rs. 1,00,000/-

3. Respondent has submitted as follows:

(i) Affidavit filed by complainant is not properly executed as the same is not properly notarized and not on Rs. 10 stamp paper.

(ii) Agreements executed prior to the Real Estate (Regulation and Development) Act, 2016 coming into force are valid and binding between the parties. Vide clause 3.9 of the agreement parties had agreed that if possession is delayed and complainant does not wish to continue in the project then he will give notice to respondent within 90 days of



expiry of such period for terminating agreement and respondent would be at liberty to sell the unit and within 120 days of realization of the complete sales consideration, respondent would refund the amount to complainant without any interest and after deduction of non-refundable amounts.

(iii) Allegations made by complainant require proper adjudication by admission/ denial, tendering documents and cross examination etc and therefore cannot be adjudicated in summary proceedings.

(iv) Complainants cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. According to the respondents only the provisions of agreement shall be binding upon the parties to such an agreement. In case of delay in offering possession, complainant is entitled to seek delay penalty @ Rs. 5/- per sq. ft. per month for every month of delay and that too at the time of offer of possession.

(v) Possession timelines were subject to force majeure and timely payments. It was duly informed that reasons for delay in handing over possession was beyond control of the respondent. Project was applied for registration on 31.07.2017.

Progress of the project is hampered and slowed down because govt Authorities have failed to develop 24 metres wide road till date. There are few portions of the road which are yet to be acquired by state govt. Authorities. Further, in 2012 Hon'ble Delhi High Court had issued an interim stay and the same was removed by an order of Division bench of



the Hon'ble Delhi High Court on 09.11.2012 whereby respondent was asked to put the money receivable from customers in an escrow account and company was not allowed to withdraw from the escrow account till 2016. 146 customers defaulted in making payments. Civil structure is erected for 650 units but customers were subsequently relocated to 4 towers on the basis of 350 bookings. Respondent suffered huge loss due to the withdrawal of 300 bookings. Now respondent is focusing on consolidation of customers completing 2 towers. Respondents are offering relocation to amicably settle the case.

(vi) Payment of Rs. 30,95,990/- is denied. It is stated that amount received by the respondent includes interest occurred on delayed payments.

4. The respondent-company has tried to defend itself by raising technical objections like the affidavit filed by complainant is not properly executed and notarized; that the disputes are referred to Arbitrator; that such matter should not be prosecuted in summary proceedings because detailed evidence led into admission/ denial; tendering of documents, cross examination of witnesses etc. are required. The respondents have also argued that the agreements executed prior to coming into force of RERA Act should be implemented as such and the provisions of RERA Act should not be made applicable on such agreements. The respondents have further raised plea of force majeure circumstances by the State Government not providing 24-meter-wide road. A stay was granted by Hon'ble Division



Bench of Delhi High Court whereby the project remains stalled between 2012 to 2016. Large number of allottees did not pay due amount resulting into defaults and withdrawal of project etc. The respondents have even denied complainant having paid claimed amount of Rs.30,95,990/-.

5. During oral arguments learned counsel for both the parties reiterated their respective stands taken in the written pleadings.

6. Authority has gone through all the facts and circumstances of the matter. It is not disputed that a Flat bearing No. A-602, 6th Floor in Tower-A was allotted to complainant in project 'Park Arena', Sector-80 Faridabad on 7.9.2010. A Builder-Buyer Agreement was executed on 30.07.2013 which stipulated that possession of flat will be delivered within 36 months of the booking plus grace period of 180 days. Basic sale consideration amount of Rs.30,44,250/- as provided for the agreement, the complainant has annexed the receipt of an amount of Rs. 30,95,990/- having been paid. Such receipts are annexed as Annexure C-6 and C-7. The entire payment was made between September, 2010 and August, 2012 i.e., well before the execution of the Flat-Buyer Agreement. The denial of the respondent in having received the said amount, therefore, is baseless.

7. Further fact of matter is that the project is stuck. The construction is stalled even while getting the project registered with Authority, respondents have stated that project will be completed only by 2025. In fact, initially respondent had mentioned 2030 as year when the project



will be completed, but later on revised to 2025. Nothing has been stated by respondent as to what is the progress and why the construction is not taking place despite having received full basic consideration amount from complainant. The respondents have no right to take full consideration even before execution of Builder-Buyer Agreement when they had not definite plans to complete the project.

8. The arguments of force majeure circumstances being taken by the respondents cannot be taken at all, if the respondents faced any litigation before Hon'ble Delhi High Court, complainant cannot be held responsible for that if some allottees withdrew from the project doubt must be raised upon the performance of the respondents and allottees, including the present complainant cannot be put into any disadvantage for this reason.

9. Another argument taken by the respondent is that the State Government have failed to provide 24-meter road. If any promised facility has not been provided by the State Government, the respondents should pursue their claim against the State Government. No promoter has a right to commence a project or to accept 100% consideration amount without ensuring that requisite facilities and infrastructure will be created by the authorities and departments concerned within a reasonable period of time. It is only after being assured of availability of such facilities that the promoters should launch their project. For the default on the part of any third party, the allottees of the project who have invested their life savings on the assurance



of the promoters cannot be held liable or put to any disadvantage.

10. Looked at from any other angle that a person who becomes an allottee of an apartment of this size and cost, is typically a middle-class person. He arranges money with great difficulty and after deploying the savings of 2-3 generations. At the time of booking, the allottee has a vision that his dream house will be available within reasonable time say 3-4 years. When his house is not delivered in 10 years, it defeats the very purpose of booking for an apartment. It frustrates the very purpose for purchase of a house. A person who was nearing 65 years of age is already over 70, but still, he has to wait for further indeterminate period of time to get the house. The respondents even now are not committing to deliver the house in foreseeable future. Nothing substantial has been stated with regard to stage of construction or as to what efforts are being made by them to mobilize funds by them etc. On the contrary, the respondents are indulging in technicalities and raising frivolous objections like affidavits are not in order etc.

11. In these circumstances, Authority is of the considered view that allottee who is complainant herein cannot be asked to wait for endless period of time. Extraordinary delay itself has ^a ground for allowing refund especially when there are no timelines available for completion in near future.

12. In the above circumstances, Authority considers it a fit case for allowing refund along with interest at the rate provide for in Rule 15 of the RERA Rules 2017.



2. On the last date of hearing, respondent was given an opportunity to put up any additional fact having bearing on the outcome in this case. No additional facts have been put by ld. counsel for the respondent. Therefore, view taken by the Authority in the order dated 29.03.2022 stands confirmed. Authority directs the respondent to refund the entire principal amount of ₹ 30,95,990/- to the complainant. Interest has been calculated from the date of making payments by the complainant up to the date of passing of this order at the rate of 9.40%. Now, respondent has to pay total amount of ₹ 30,95,990/- + ₹ 30,55,108/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]