



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 527 of 2018

Date of Institution: 11.09.2018

Date of Decision: 22.03.2022

Vaibhav Gupta s/o Santosh Kumar Gupta r/o Flat no. 34-C, Block-G,
Kanchanjunga Apartment, Sector-53, Noida-201301.

...COMPLAINANT

Versus

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

....RESPONDENT

Hearing: 41st

Present: - Mr. Mohd. Faris, Advocate Counsel for Complainant through VC
Mr. Hemant Saini, Advocate & Mr. Himanshu Monga, Advocate
Counsel for respondent.

Soate Gupta

JUDGEMENT:

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

Complainant had booked a flat in July,2009 in respondent's project- 'Park Elite Premium' situated in Faridabad, Haryana by paying ₹2,50,000/-. Allotment letter of unit no. H-203 having super area of 1128 sq. ft. was allotted to him on 16.12.2009. Flat buyer agreement was executed between the parties on 20.06.2014 and in terms of clause 3.1 of it, possession was to be delivered within 36 + 6 months i.e. upto 20.12.2017. An amount of ₹32,74,106.93/- has been paid against basic sale price of ₹22,80,997/-. Despite receiving 85% of total sale consideration, the respondent could not adhere to the terms & conditions of flat buyer agreement and failed to give possession to the complainant within stipulated time.

2. Feeling aggrieved present complaint has been filed seeking relief of possession alongwith all additional facilities and to execute all necessary documents in respect of booked unit by July,2018 and compensation of ₹5,00,000/- for unfair trade practice, ₹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 complainant has concealed the fact that offer of possession has already been made to him on 14.03.2018 after receipt of occupation certificate on 27.02.2018. It is the complainant who is at fault by not taking possession after making payment of balance dues. It is admitted that possession was to be delivered within 36+6 months from the date of execution of flat 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 104.79 sq. mtr., 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 flat buyer 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 ₹11,404.98/- as timely payment discount and payment of only ₹32,62,701.95/- 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 flat 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 interest on the amount paid or compensation for delay in offering possession. Construction of the unit is completed and possession has already been offered on 14.03.2018. 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 possession alongwith all additional facilities and execution of all necessary documents in respect of booked unit by July, 2018 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. Vide order dated 31.08.2021 it was observed that complainant has to approach

Hon'ble Authority for relief of possession alongwith delayed interest by way of filing separate complaint. Claim for compensation under different heads will be dealt with by this Court. Accordingly, this complaint was proceeded with for relief of compensation only.

6. Perusal of the file shows that the complainant had booked a flat bearing no. H-203 having tentative super area of 1128 square feet situated in Park Elite Premium, Faridabad vide flat buyer agreement dated 20.06.2014. Respondent was duty bound to deliver possession upto 20.12.2017 in terms of flat buyer agreement dated 20.06.2014. After completing construction work of the unit, respondent had applied for occupation certificate on 17.05.2017 which was received on 27.02.2018, thereafter offer of possession of the booked flat was made by the respondent on 14.03.2018 alongwith demand of ₹16,44,301.39/-. Compensation of ₹2,24,472/- was offered to him as a goodwill gesture with the understanding that said offer was subject to clearing the dues within the stipulated time i.e. upto 13.04.2018. It is pertinent to mention here that fact of offer of possession has not been disclosed by the complainant in his complaint.

7. Record shows that copy of statement of account dated 27.06.2014 has been placed on record by learned counsel for complainant at page no.57 of complaint showing that a sum of ₹32,74,106.93/- has been paid by the complainant. Copy of offer of possession letter dated 14.03.2018 has been

placed on record by learned counsel for respondent showing that a sum of ₹32,73,606.98/- has been paid by the complainant. In reply it has been admitted by the respondent that the complainant had made the payment of ₹32,62,701.95/- and additional incentive of ₹11,404.98/- was given to complainant as timely payment discounts. The total amount of ₹32,62,701.95/- + ₹11,404.98 comes to ₹32,74,106.93/-. It is proved on the record that a sum of ₹32,74,106.93/- was paid by the complainant to the respondent. Copies of receipts have not been placed on record by the complainant showing the dates of payments. Since the statement of account dated 27.06.2014 placed on record at page no.57 shows the payment of ₹32,74,106.93/-, it is presumed that the payment of ₹32,74,106.93/- was made upto 27.06.2014. The possession of flat was to be delivered by respondent to the complainant till 20.12.2017. It is apparent on the record that possession was offered by the respondent to the complainant on 14.03.2018 i.e. after delay of 2 months 23 days. The amount of ₹32,74,106.93/- was being used by the respondent till 14.03.2018. For period of 2 months 23 days, the respondent had been utilising the amount of ₹32,74,106.93/- 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 respondents. 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 20.12.2017 to 14.03.2018 i.e., 2 months and twenty-three 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 ₹) |
|-----------------------|--------------------------|------|-------------------------------|
| 32,74,106.93 | 20.12.2017 to 14.03.2018 | 6 % | 45,748/- |
| Total | | | 45,748/- |

8. (i) Thus, the total amount of compensation under the head mental agony and harassment comes to ₹ 45,748/-.

(ii) Under relief clause (a) initially the complainant had sought possession of unit along with all additional facilities and execution of all necessary documents in respect of booked unit by July, 2018. Vide order

dated 31.08.2021 passed by this Court the complainant was given liberty to approach Hon'ble Authority for relief of possession along with delay interest by way of filing separate complaint.

(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.

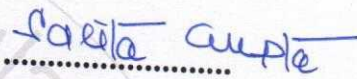
(v) Under relief clause (d), the complainant has sought ₹1,00,000/- as reimbursement of legal expenses. But no receipt or fee bill has been placed on the record in support of it. In the present case there were 41 hearings. In the absence of any such proof, the plea of the complainant is not admitted and a sum of ₹25,000/- is awarded as litigation cost.

9. Sequel to aforesaid discussion, this complaint is partly allowed. Respondent is directed to pay an amount of (₹45,748 + ₹25,000) = ₹70,748/- (Rupees seventy thousand seven hundred and forty eight only) to the

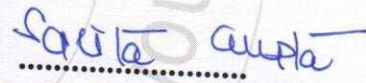
complainant in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of the amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

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

22.03.2022


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 9 pages and all the pages have been checked and signed by me.


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(DR. SARITA GUPTA)
ADJUDICATING OFFICER