



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. : 530 of 2018

Date of Institution: 11.09.2018

Date of Decision: 22.03.2022

Surender Singh s/o Man Singh r/o House no. 20, Vijay Nagar, Bhiwani,
Haryana- 127021.

...COMPLAINANT

Versus

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

....RESPONDENT

Hearing: 42nd

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

Salita Gupta

JUDGEMENT:

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

Complainant had booked an independent residential floor in May, 2009 in respondent's project-'Park Elite Floors' situated in Faridabad, Haryana by paying ₹3,00,000/-. Allotment letter of unit no. PE-184-FF having super area of 1418 sq. ft. was issued to him on 24.12.2009. Floor buyer agreement was executed between the parties on 18.09.2010 and in terms of clause 4.1 of the said agreement, possession was to be delivered within 24 + 6 months i.e. upto 18.03.2013. An amount of ₹24,65,885.25/- has been paid against basic sale price of ₹25,56,002/-. Despite receiving 90% of total sale consideration, the respondent could not adhere to the terms & conditions of floor 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 complaint is liable to be dismissed for non-joinder of necessary party as property in question was jointly booked by complainant and co-applicant Mr. Ajay Kumar but co-applicant has

not been joined as party to this complaint. Complainant is relying upon FBA executed qua unit no. H-2-18-FF and concealed the fact that initially unit no. A-11-16-FF was allotted to complainant vide allotment letter dated 24.12.2009 thereafter upon request of allottees, allotment was changed from unit no. A-11-16-FF to H-2-18-FF, for said unit FBA was executed between the parties but due to factor beyond control of respondent unit no. H-2-18-FF could not be developed. Option was given to allottees to either take refund of paid amount @9% interest or accept allotment of unit no. PE-184-FF with an area of 1510 sq. ft. Complainant had signed the consent form for new unit no. PE-184-FF on 12.06.2012 and said unit was formally allotted to complainant on 27.12.2012. Thereafter, 2 copies of FBA for new unit no. PE-184-FF was issued to complainant for returning the same after signing it in compliance of terms of consent letter dated 12.06.2012 but complainant had failed to do so. It is stated that terms and conditions of new FBA are binding between the parties and not the earlier FBA as sought to be relied upon by complainant. It is admitted that possession was to be delivered within 24+6 months from the date of new 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 232.44 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 new floor 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 ₹31,071.20/- as timely payment discount and payment of only ₹24,34,814.05/- 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 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 interest on the amount paid or compensation for delay in offering possession. Construction of the unit is going on in full swing at site and possession of booked unit will be handed over shortly to the complainant. 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 04.08.2021, 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 would be dealt with by this Court. Accordingly, this complaint was proceeded with for relief of compensation only.
6. Record shows that the relief of compensation has been sought by the complainant for unit no. PE-184-FF. He has not stated anything with regard to initial allotment of unit no. A-11-1-FF and change of unit to H-2-18-FF. The respondent has stated in its reply that vide allotment letter dated 24.12.2009 the complainant was initially allotted unit no. A-11-1-FF. Copy of allotment letter has been placed on record as Annexure-3. As per version of the respondent, on the request of complainant the unit was changed from A-11-1-FF to H-2-18-FF. It is the version of respondent that floor buyer agreement for unit H-2-18-FF was executed between the parties on 18.09.2010. Copy of floor buyer agreement has been placed on record by complainant. Further it is the argument of ld. counsel for the respondent that due to force majeure, the reasons beyond control

of respondent, tower in which unit no. H-2-18-FF allotted to the complainant was situated, could not be developed, offer was given to complainant either to take refund of paid amount alongwith interest @9% per annum or accept allotment of unit no. PE-184-FF having area of 1510 sq. ft. It was consented to by the complainant and he had signed consent form on 12.06.2012. The said unit was formally allotted to complainant on 27.12.2012. Two copies of floor buyer agreement with regard to new unit no. PE-184-FF were prepared for putting signatures of the complainant. As per version of respondent, the said copy of floor buyer agreement, after signatures of complainant was not received back. The complainant is silent on the said point. He has placed on record copy of floor buyer agreement which was related to previous unit no. H-2-18-FF, the complainant has sought compensation for unit no. PE-184-FF but has placed on record copy of floor buyer agreement with regard to unit no. H-2-18-F. Since no floor buyer agreement could be executed for unit no. PE-184-FF, terms and conditions of floor buyer agreement for unit no. H-2-18-FF would be taken into consideration. The offer made by respondent for alternate unit no. PE-184-FF was accepted by the complainant on 12.06.2012, copy of acceptance letter duly signed by both parties has been placed on record by ld. counsel for respondent as Annexure-5. No other document is on the record with regard to alternate unit no. PE-184-FF. As per clause 4.1 of floor buyer agreement dated 18.09.2010, possession of independent residential floor was to be delivered within 24+6 months i.e. upto 12.12.2014 (starting from 12.06.2012 the date of acceptance of

offer of alternate unit by the complainant). Copy of ledger account of complainant for unit no. PE-184-FF has been placed on record showing that amount of ₹24,65,885.25/- starting from 27.05.2009 to 10.11.2016 has been paid by the complainant to the respondent.

7. The possession was to be delivered till 12.12.2014. Since the respondent has failed to offer possession, the complainant had instituted this complaint on 11.09.2018. As per record, an amount of ₹24,65,885.25/- was paid by the complainant till 10.11.2016. It is apparent on the record that neither possession was delivered by the respondent to the complainant nor delay compensation has been paid. The amount of ₹24,65,885.25/- was being utilized by the respondent till 22.03.2022 i.e., date of passing this judgement. For all these 7 long years, the respondent had been utilising the amount of ₹24,65,885.25/- 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 12.12.2014 to 22.03.2022 i.e., 7 years 3 months and 11 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 v/s 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 ₹)
24,65,885.25	12.12.2014 to 22.03.2022	6 %	10,77,423/-
Total			10,77,423/-

8. (i) Thus, the total amount of compensation under the head mental agony and harassment comes to ₹10,77,423/-. 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 of mental harassment and anxiety is restricted to ₹5,00,000/- only.

(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 04.08.2021 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 practice. 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 42 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.

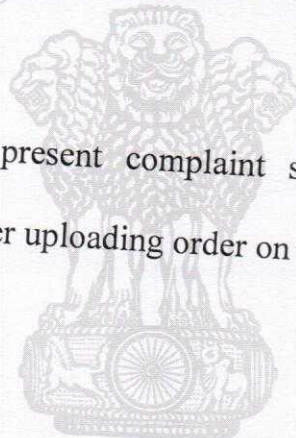
9. It is worthwhile to mention here that unit no. PE-184-FF situated at Park Elite Floor, Faridabad is jointly owned by the present complainant Sh. Surender Singh and Sh. Ajay Kumar. The complaint has only been filed by Sh. Surender

Singh. It is relevant to mention here that no separate claim for compensation would be entertained if Sh. Ajay Kumar co-owner chooses to file separate claim for compensation.

10. 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.

11. 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



सत्यमेव जयते

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 10 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER