



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 26 OF 2020

Dr. H.S Saxena & Anr.

...Complainant.

Versus

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

M/s Countrywide Promoters Pvt. Ltd.

M/s HDFC Ltd.

...Respondent.

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 04.05.2022

Hearing: 8th

Present: - Shri Arun Sharma, Counsel for the complainant.

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

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Case of the complainants is that he had booked a flat in respondent's project named 'Discovery Park, Faridabad, on 27.01.2012. An allotment letter for Flat No. A-903, 9th floor Tower-A with 1120 sq.ft. area was issued by respondents in favor of complainants on 17.02.2012. Builder Buyer Agreement (BBA) was executed on 06.12.2012. Complainants opted for construction linked plan. In terms of clause 3.1 of the BBA, possession was

supposed to be delivered within 36+6 months, which comes to 06.06.2016.

Complainants alleges that they have so far paid an amount of Rs. 37,75,339.97/- against basic sale price of Rs. 30,90,800/-.

2. In support of the contention that complainants have paid an amount of Rs. 37,75,339.97/- the complainants refer to ledger account dated 27.07.2018 issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged.

3. The complainants further alleges that he had sent emails dated 16.05.2015 and 13.06.2016 enquiring about construction and handing over of possession of his unit. Respondent sent a reply stating that construction activity of the project is going at a slow pace. Project is not complete till date. Complainant has prayed for refund of the amount paid by him along with interest for the reason that respondents have delayed completion of project.

4. The respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Averments made by the respondents in their reply are summarized as follows:-

(i) Complainant was originally allotted a unit the respondent's project Park Elite Premium. Same was terminated on the ground of non-payment. It was after the complainant's request that money from previous unit was transferred to the present unit and the same was informed to complainants via e mail dated 16.03.2012.



(ii) Complainant has defaulted in making timely payment of the demands raised by the respondent.

(iii) That Builder Buyer Agreement with complainant was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

(iv) Completion of the project has been delayed on account of certain force majeure conditions.

(v) Work of the project is in full swing and possession will be handed over shortly.

5. Respondent no. 3, M/s HDFC Ltd have also filed their reply. In the said reply, it is stated that complainants have availed home loan of Rs. 30,00,000/- from the respondent no. 3 out of which Rs. 28,38,582/- has already been disbursed. There is no allegation of deficiency in service on the part of respondent no. 3 and no relief can be sought against the agreed terms and conditions of the loan agreement.

6. Both parties have argued their case at length. Complainants states that they do not wish to continue with the project any longer. Accordingly, they press for refund of the amount paid by them along with interest as applicable under the Rules.



7. Respondents on the other hand argues that construction is going on in full swing and an offer of possession will be made soon after completion of the project.

8. Authority has gone through respective written submissions as well as verbal arguments put by both the sides. It observes and order as follows: -

(i) There is no denial to the fact of Rs. 37,75,339.97/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the ledger account issued by respondents in which receipt of said amount by the respondent from the complainant has been duly acknowledged vide statement dated 27.07.2018.

(ii) Respondents admits that construction of the project has not been completed. In fact, it is still going on. Further, no specific time period has been committed for its completion.

Declared policy of this Authority in all such cases where the projects are not complete, nor specific time period provided for its completion and extraordinary delay has already been caused from the due date of offer of possession, is that the complainants would be entitled to relief of refund because they cannot be forced to wait for completion of project for endless period of time.

(iii) Arguments in respect of force majeure conditions also cannot be accepted and no such conditions have been shown to be applicable. Nothing

extraordinary has taken place between the date of executing the BBA and due date of offer of possession, and for that matter even till now, has been shown to have happened. Therefore, respondents are defaulting on multiple counts.

(iv) One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of Builder-Buyer Agreements.

In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other in regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The

majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts.

Subject to the above, argument of learned counsel for the respondents that provisions of agreement are being altered by Authority with retrospective effect, do not hold any ground.

In the instant case, however, relief of refund has been sought. The refund in this case is admissible because respondents have neither completed the project nor have given any time frame within which it will be completed. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERA will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. Provisions of agreement will not come into play when the contract is breached. The general law of the land will regulate such situation and not provision of the agreement.

(v) The complainants being entitled to refund of the entire amount of Rs. 37,75,339.97/- paid by them, Authority orders the refund of the said amount along with interest from the date of receipt of payment till date of this order. The complainant against the payment has annexed ledger account issued by

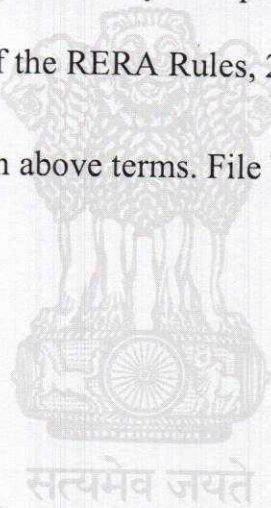


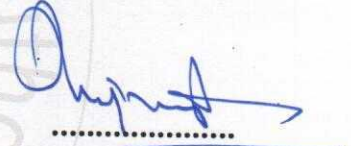
respondents in which receipt of Rs. 37,75,339.97/- by the respondent from the complainant has been duly acknowledged dated 27.07.2018.

(vi) The total interest for the period ranging from the date of receipt of payments to date of passing this final order (04.05.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e., @ 9.40% payable by the respondents to the complainants works out to Rs. 24,80,913/-.

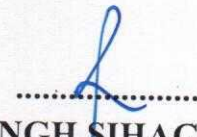
(vii) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 37,75,339.97/- plus interest amount of Rs. 24,80,913/- to the complainant, within a period of 90 days of uploading of this order i.e. the period prescribed under Rule 16 of the RERA Rules, 2017 12.

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





RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]