HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1909 of 2019

Amit Mangla and Anr. ...Complainants.

Versus

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

CORAM: Rajan Gupta **Chairman**
Dilbag Singh Sihag **Member**

Date of hearing: 22.04.2022.

Hearing: 9th

Present: - Shri Amit Goyal, Counsel for the complainant.

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

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Complainant's case is that he entered into an agreement for purchase of a flat bearing no. C-1603, Floor 16th admeasuring 1646 sq. ft. in respondent project "Park Sentosa" in Sector 77, Faridabad on 24.08.2013. Deemed date of offer of possession was 42 months from the date of sanction of

building plan or execution of flat buyer agreement whichever is later after adding grace period of 180 days. Basic sales price of the unit was Rs. 65,75,770/- out of which he had paid an amount of Rs. 41,00,236/- till the year 2013. Respondents had offered alternate flat to the complainant but have stated nothing as to why originally allotted apartment could not be offered. Complainant however has refused to accept allotment of alternate unit. Complainant alleges that basic structure of the originally allotted flat is not complete as not even a single storey is constructed by respondent. Complainant further alleges that requisite approvals have not been taken from competent Authorities and respondent will not be in a position to deliver the possession in near future as they appear to have abandoned the project.

Complainant had several times approached the respondent for refund of their paid amount along with interest but respondent did not respond to request of the complainant. Complainant has quoted a judgement of Hon'ble Apex court titled as Pioneer Urban Land Vs Govindam in which the Hon'ble Supreme Court held that time is the essence of the contract and if the possession is not offered on time, the buyer is entitled to full refund along with interest and compensation.

2. Complainant has prayed for refund of the amount paid by him along with interest @ 18 p.a. Further he has prayed for compensation of Rs. 500,000/-, litigation cost of Rs. 44,000/-.

3. Respondent has denied the allegations of the complainant and has submitted as follows:

(i) Present project "Park Sentosa" is a RERA registered project and the registration of the said project is valid till 31.07.2022.

(ii) Agreements executed prior to the Real Estate (Regulation and Development) Act, 2016 coming into force are valid and binding between the parties. Parties are bound by the terms and conditions of the flat buyer's agreement. Complaint is liable to be dismissed and matter is required to be referred to an arbitrator as per clause J (14) of the agreement.

(iii) Respondent company offered an alternative unit to the complainant on 27.06.2019.

(iv) Complainant has defaulted in making payments. Possession timelines were subject to force majeure and timely payments. Further it was agreed between the parties that if possession gets delayed complainant shall be entitled to delay payment only at the time of execution of conveyance deed.

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

5. Authority has gone through all the facts and circumstances of the matter. It observes and orders as follows:

(i) It is not disputed that a flat was allotted bearing no. C-1603, Floor 16th admeasuring 1646 sq. ft. in respondent project "Park Sentosa" in Sector 77,

Faridabad vide agreement dated 24.08.2013. Builder-Buyer agreement stipulates that possession of flat will be delivered within 42 months of the sanction of building plan or execution of flat buyer agreement whichever is later plus grace period of 180 days. This clause is unconscionable. If the building plans had not been approved, respondents had no right to seek money from the complainants. Date of possession shall be considered 3 years from making the substantial payments by the complainants. Complainant had made substantial payment of Rs. 34,25,043/- till September 2013. Accordingly deemed date of possession is 10.09.2016. Against basic sale consideration amount of Rs. 65,75,770/- as provided for the agreement, the complainant has annexed the receipts of an amount of Rs. 34,25,043/- having been paid out of the total paid amount of Rs. 41,00,236/-. Such receipts are annexed at page 58 to 61. Complainant has also annexed statement of account dated 16.03.2016 issued by respondent showing receipt of Rs. 41,00,236/- by respondents

(ii) Further fact of matter is that this project is a stuck project. Nothing has been stated by the respondent regarding progress of construction and why construction is not taking place for last many years despite having received huge amount from complainant. The respondents had no right to take such huge amount even before execution of Builder-Buyer Agreement and when they had no definite plans to complete the project. Respondents are arguing that they have offered alternative unit to the allottee but the same is not acceptable to complainant. It is a settled position of law that respondents cannot force

allottees to accept alternate units. Alternate unit can be offered only with consent of the allottee. All allottees are entitled to get possession of their booked apartments and if it cannot be delivered, they are well within their right to seek refund. Respondents have not submitted any progress report of the project as to exhibit their intention or willingness to complete the project. It can be inferred from the conduct of the respondents that project is not going to be completed in near future.

Looked at from any other angle, 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, often by deploying savings of 2-3 generations. At the time of booking, allottee has a vision that his dream home will be available within reasonable time say 3-4 years. When his house is not delivered after 5 years from expected date of delivery, it defeats very purpose of booking the apartment. It frustrates the very purpose of purchasing a house. More importantly even now there is no definite time frame available within which project is likely to be completed. The respondents even now are not committing to deliver the house in foreseeable future. Nothing substantial has been stated in regard to stage of construction and 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.

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

extraordinary have 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. 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. Authority is of considered view that allottee complainant cannot be asked to wait for endless period of time. Extraordinary delay itself is a ground for allowing refund especially when there are no timelines available for completion in near future.

(v) In these circumstances, it has been observed by the Authority that by virtue of section 18 of RERA Act,2016 allotee is within his right to ask for refund and as such when unit is not ready and no timeline is committed by respondent for handing over of possession, allotee cannot be forced to wait for an indefinite

period for possession of booked unit. So, Authority deems it a fit case for allowing relief of refund. Accordingly, Authority grants relief of refund of paid amount to the complainants along with interest as per Rule 15 of HRERA Rules, 2017 i.e., SBI MCLR+2% (9.40%) from the respective dates of making payment till the actual realization of the amount.

In furtherance of aforementioned observations, Authority directs the respondent to refund the entire principal amount of Rs. 41,00,236/- to the complainant.

Complainant was directed to submit proper receipts of payment on the last date of hearing i.e., 29.03.2022 however complainant has failed to submit the receipts. In the absence of receipts Authority will decide the case on the basis of best evidence placed on record by the complainant. On an amount of Rs. 34,25,043/- for which receipts have been submitted by 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%. For the remaining amount of Rs. 6,75,193/-, interest has been calculated from the date of statement of accounts dated 16.03.2016 till the date of passing this order i, e. 22.04.2022. Now, respondent has to pay total amount of ₹ 41,00,236/- + ₹ 31,85,456/– to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e. 90 days in two equal instalments. First instalment of 50% of total amount shall be payable by respondent to complainant within 45 days of uploading of this order and remaining 50% in next 45 days.

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

.....

RAJAN GUPTA
[CHAIRMAN]

.....

DILBAG SINGH SIHAG
[MEMBER]