



Complaint No. 533 of 2018

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 533 of 2018

Jyoti Nathani Chadha

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 21.09.2022

Hearing: 37th

Present: Ms. Jyoti Nathani, Complainant in person.

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

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. On the last date of hearing dated 11.05.2022 of this case, a detailed and reasoned order was passed disclosing tentative view of the Authority. Said order is being reproduced for ready reference.

"Case of the complainant is that he had booked a flat in respondent's project named 'Park Arena', sector-80, Faridabad on 02.09.2010 by paying Rs 3,00,000/- on booking amount. An allotment letter for Flat No. A-1803, Tower A with 1107 sq. ft.

area was issued by respondents in favor of complainant on 16.11.2010. Builder Buyer Agreement (BBA) was executed on 18.12.2013. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which comes to 18.06.2017. Complainant alleges that he has, so far has already paid an amount of Rs.32,21,108/- against basic sale price of Rs. 31,62,500/-. Further it has been alleged that respondent has not offered possession till date even after receipt of 95% of consideration amount. Feeling aggrieved present complaint has been filed by the complainant seeking refund of paid amount alongwith interest.

2. In support of the contention that complainant has paid an amount of Rs. Rs.32,21,108/-, complainant refers to statement of account dated 26.06.2017 issued by respondent, annexed at page no. 56 of complaint.
3. Respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by complainant. Averments made by respondents in their reply are summarised as follows: -
 - i) 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.

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- ii) Respondent had offered alternate unit to the complainant vide e-mail dated 02.03.2017 but complainant did not revert back on said offer.
- iii) Govt. Authorities have failed to develop 24-meter road till date which has hampered and slowed down the project Park Arena.
- iv) Delay in completion of the project occasioned due to force majeure conditions. Completion of project has been affected due to reasons beyond control of the respondent. Civil structure of this project was erected on the basis of 650 planned units however later on due to withdrawal of 300 booking all the customers were relocated to 4 towers. Respondent is now focusing on the consolidation of 2 towers whose structure is complete. Respondent is ready and willing to offer alternate units in a ready to move in unit in another project.
- v) Respondent denies that an amount of Rs. 32,21,108/- has already been paid by the complainant.
4. Respondents argues that they have offered allotment of an alternate unit in one of the other projects of the respondents.
5. Authority has gone through respective written submissions as well as verbal arguments. It observes and order as follows: -
- i) There is no denial to the fact of Rs. 32,21,108/-, having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from statement of account dated 26.06.2017 annexed at page no. 56 of complaint. However, no receipt has been placed on record by complainant to the date when various instalments were paid.

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- 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. The respondents further have offered an alternate unit to the complainant which proves that they are not in a position to offer originally booked apartment. Reply of the respondent in fact amounts to clear admission that the project is stalled, 300 allottees have been relocated, and they can offer an alternate unit to complainant.

Declared policy of this Authority in all such cases where the projects are not complete nor likely to be completed within foreseeable future 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. Further, complainants cannot be forced to accept alternate unit against their wishes. Alternate unit can be offered only with the consent of the allottee.

- 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.
- iv) One of the averments of respondents is that provisions of 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.

- v) *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.

vi) *For aforesaid reasons, the Authority prima facie is of view that relief of refund of paid amount prayed by complainant deserves to be granted. However, on request of both parties the case is adjourned for final disposal. Complainant is directed to provide receipt of paid amount of Rs 32,21,108/- before next date of hearing failing which interest on said amount will be calculated w.e.f statement of account dated 26.06.2017.*

6. *The observations given by the Authority in aforesaid paragraphs are tentative in nature and subject to final arguments by both the parties. Adjourned to 14.07.2022 for final arguments. No further opportunity to any of the parties."*

2. Complainant has placed on record receipts of Rs. 32,84,769.41/- on 11.07.2022.

3. Today Id. counsel for the respondent argued that they have offered allotment of an alternate unit in one of the other projects of the respondents.

Further, Ld. counsel for respondent referred to para 32 of judgement dated 05.04.2021 passed by Hon'ble Real Estate Appellate Tribunal in Appeal no. 255/2019 titled as Ravinder Pal Singh vs M/s Emaar MGF Land Ltd in support of his case.

Para 32 of judgement dated 05.04.2021 passed by Hon'ble Real Estate Appellate Tribunal in Appeal no. 255/2019 titled as Ravinder Pal Singh vs M/s Emaar MGF Land Ltd , quoted by respondent in support of his case is reproduced below for reference:-

“32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government”.

4. In the present case, complainant has paid an amount of Rs 32,84,769/- against basic sale price of Rs. 31,62,500/-. Said amount has been paid between the period ranging from 02.09.2010 (booking amount) to 17.08.2012 (last

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amount paid). As per Annexure-D to BBA executed between the parties, both the parties agreed to construction linked plan, respondent in his reply has not specifically revealed the exact stage of construction with documents to prove that he had issued demand letter which has not been honoured by the complainant by that date whereas his construction was not up to the level which was referred in Annexure D. Status of construction as claimed by the respondent requires documentary evidence without which it is difficult to decide how demand raised on that date was in consonance of the payment plan. Stages of construction of project and unit in question, have not been revealed as well in written statement of the respondent with documentary evidence. Moreover, more than basic sale price as agreed between parties in terms of BBA has already been paid by the complainant since year 2012. In case complainant had stopped making payment after 2012 then respondent should have acted proactively in issuing termination letter if so warranted and refund paid amount as per provision of BBA. Respondent kept amount of complainant with him without any notice/communication to the complainant between 2012-2018 (till the date of filing this complaint) for reason of stopping payments. In nutshell, respondent has not referred to any document for proving the fact that complainant was at default by not making payment on time/not honouring

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demand letter and as per documents already place on record it is not the case that complainant was at default.

5. For the reasons stated in para 4, respondent argument does not have merits and same is rejected. The view taken by the Authority in the order dated 11.05.2022 stands confirmed. Authority directs the respondent to refund the entire principal amount of ₹ 32,84,769.40/- 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 10%. Now, respondent has to pay total amount of ₹ 32,84,769.40/- + ₹ 35,48,196/- to the complainant within a period prescribed under Rule 16 of HRERA Rules i.e., 90 days in two equal instalments.

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


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DR. GEETA RATHEE SINGH
[MEMBER]


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NADIM AKHTAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]