



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 243 OF 2021

Ved Paul

Versus

...Complainant

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

...Respondent

**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar
Dilbag Singh Sihag**

**Member
Member
Member**

Date of hearing: 21.09.2022

Hearing: - 14th

**Present: - Mr. Neeraj Sansaniwal, Ld. counsel for the Complainant through VC.
Mr. Hemant Saini and Mr. Himanshu Monga, Ld. counsels for the respondent.**

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While initiating his pleadings, Ld. counsel for the complainant submitted that case of the complainant is that he was allotted a unit bearing no. F-401, Tower- F, measuring super area of 1874 square ft. in respondent's project named 'Park Arena, sector-80, Faridabad, on 24.02.2011. Buyer Agreement (BBA) was executed on 21.04.2011. In terms of clause 3.1 of the BBA, possession was also supposed to be delivered within 36+6 months, which comes to 21.10.2014. Complainant allege that he has so far paid an amount of Rs. 50,73,757/- against basic sale price of Rs. 45,91,300/-. Complainant further alleges that vide letter dated 21.11.2013 respondent unilaterally changed his unit from F-401 to H-304 in the same project.
2. In support of his contention regarding payment of an amount of Rs. 50,73,757/- complainants have annexed receipts of payment issued by the respondent.
3. Complainant further alleges that project is not complete as on date rather far from completion. Therefore, he made a prayer for refund of the paid amount along with permissible interest on account of inordinate delay in completion of project as there is no hope of completion in near future.
4. On the other hand, respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments

made by the complainant. Averments made by the respondents in their reply are summarized as follows: -

- i. Respondent had offered alternate unit to the complainant vide e-mails dated 01.04.2016, 18.05.2016 and 27.06.2019.
 - ii. Govt. Authorities have failed to develop 24-meter road till date which has hampered and slowed down the project Park Arena.
 - iii. 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.
 - iv. As per clause 26 of booking form and 3.8 of FBA, respondent can re-allocate the unit for the reason beyond control of the respondent.
 - v. Construction of the unit is in progress and respondent are making every endeavor to handover the possession.
5. Both parties have argued their case at length. Complainant reiterates that project is nowhere near to completion and there is no hope of its



completion in near future, therefore, he does not wish to continue with the project any longer. Accordingly, he presses for refund of the amount paid by him along with interest as applicable under the Rules.

6. Ld. 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 the 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".

7. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides while passing following orders: -

i. Admittedly complainant has paid an amount of Rs. 50,73,757/-.
Further as per receipts submitted by him this amount got verified.

ii. No specific time period has been committed by the respondent for completion of the unit as respondents have already offered an alternate unit to the complainant but the same has not been accepted by the complainant.

iii. Declared policy of this Authority in all such cases where projects are not complete nor likely to be completed within foreseeable future and extraordinary delay of more than 5 years, then complainants would be entitled to relief of refund under section 18 of RERA Act, 2016 as he cannot be forced to wait for completion of project for endless period of time. Further, complainant cannot be forced to accept alternate unit against his wishes. Alternate unit can be offered only with the consent of the allottee.

iv. Arguments in respect of force majeure conditions also cannot be accepted as nothing proved on paper which are applicable in this case. No force majeure conditions were proved 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 have been defaulting on multiple counts.

- v. Complainant has also stated that his unit was unilaterally changed by the respondent whereas respondent was of the view that it was changed due to reasons beyond control of respondent. Even if plea taken by the respondent is accepted even then respondent has failed to deliver possession of the changed unit.
- vi. With respect to argument of 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 respondent's case, Complainant has paid an amount of Rs 50,73,757/- against basic sale price of Rs. 45,91,300/-. Said amount has been paid between the period ranging from 27.11.2010 to 19.02.2014 (last 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 honored 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 2010. In case complainant had stopped making payment after 2014 then respondent should have acted pro-actively 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 2014-2021 (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 honoring demand letter and as per documents already place on record it is not the case that complainant was at default.

- vii. Complainant being entitled to refund of Rs. 50,73,757/- paid by him under section 18 of RERA Act, 2016, Authority orders refund of the said amount along with interest from the date of payment up to the date of passing this order.



- viii. Total interest for the period ranging from date of payments up to the date of passing this final order (21.09.2022) in terms of Rule 15 of HRERA Rules,2017 i.e., @ 10 % payable by the respondents to the complainants works out to Rs. 51,92,437/-.
- ix. Authority hereby orders that respondents shall refund the principal amount of Rs. 50,73,757/- plus interest amount of Rs. 51,92,437 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.
8. **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]