



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 737 of 2021

Renu Garg

...Complainant

Versus

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

...Respondent

**CORAM: Dr. Geeta Rathee Singh**

**Member**

**Nadim Akhtar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of hearing:** 30.09.2022.

**Hearing:** - 11<sup>th</sup>

**Present:** - Mr. Shivam Grover, counsel for the Complainant through VC.

Mr. Hemant Saini and Himanshu Monga, Counsel 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 she had booked an office space in respondent's project named 'Park Central', sector-85, Faridabad, on 01.11.2010 by paying an amount of Rs. 3,07,725/-. An



allotment letter for Office space No. U-42, measuring super area 558 sq. ft. was issued by the respondents in favour of complainant on 26.12.2010. Builder Buyer Agreement (BBA) was executed on 27.11.2011. In terms of clause 4.1 of the BBA, possession was also supposed to be delivered within 36+6 months, which comes to 27.05.2016. Complainants alleges that they have so far paid an amount of Rs. 35,52,601.12/- against basic sale price of Rs. 33,20,100/-.

2. In support of his contention regarding payment of an amount of Rs. 35,52,601.12/- complainant has annexed receipts of payment issued by the respondent. She also refers to page 54 of the complaint which is a statement of account dated 03.01.2020 issued by the respondents in which receipt of said amount has been duly acknowledged by the respondent from the complainant.
3. Complainant further alleges that project is not completed. In fact, it is far from completion. Complainant has prayed for refund of the amount paid by him along with permissible interest on account of inordinate delay in completion of project and no hope of completion in near future.
4. 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 company offered an alternative unit to the complainant on 01.06.2016 in another project namely Next Door and also tried to amicably settle the matter vide e-mails dated 04.01.2020, 25.07.2020, 04.09.2020 and 21.10.2020.
- (ii) Respondent duly offered discount of Rs. 127224/- as inaugural discount and Rs. 139500/- as launch discount to the complainant.
- (iii) Possession was to be delivered within 36 months from the date of execution of agreement after adding grace period of 6 months. Said delivery of possession was subject to no force majeure circumstances being occurred. During the course of construction various force majeure events took place like ban on construction by Environment Pollution (Prevention and Control) Authority, NGT prohibiting construction and Covid-19 outbreak.
5. Both parties have argued their case at length. Complainant reiterates his pleading as recorded in para 3 of this order. Project is nowhere near completion and there is no hope of its completion in near future, therefore, she does not wish to continue with the project any longer. Accordingly, she 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 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) Complainant in his complaint has stated that an amount of Rs. 35,52,601.12 has been paid by her. Further as per receipts





submitted by her this amount got verified. Payment of amount of Rs. 35,52,601.12 is further adequately proved from the statement of accounts dated 03.01.2020 issued by the respondents to the complainant. Said statement is annexed at page 54 with the complaint.

(ii) No specific time period has been committed for its completion.

Respondents further have offered an alternate unit to the complainant. Complainant has not accepted said offer.

(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 or so has already been proved. Complainants would be entitled to relief of refund 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 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.



(v) Ld. counsel for the respondent has also 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. With respect to said issue, it is observed that complainant has paid an amount of Rs 35,52,601.12/- against basic sale price of Rs. 33,20,100/-. Said amount has been paid between the period ranging from 08.11.2010 (booking amount) to 13.12.2012 (last amount paid). As per Annexure-II 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 II. 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 2012 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 2012-2021 (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.

(vi) In the instant case, relief of refund has been sought. Refund in this case is admissible as 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.

(vii) Therefore, Complainants being entitled to refund of the entire amount paid by them; Authority orders refund of the said



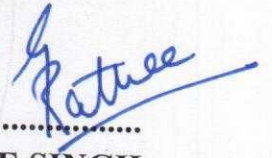


amount along with interest from the date of receipt of payment  
till date of this order.

(viii) The total interest for the period ranging from receipt of payments to date of this final order (30.09.2022) in terms of Rule 15 of HRERA Rules,2017 i.e. @ 10% payable by the respondents to the complainants works out to Rs. 37,47,346 /-.

(ix) The Authority hereby orders that the respondents shall refund the principal amount of Rs. 35,52,601.12/- plus interest amount of Rs. Rs. 37,47,346/- 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]



.....  
NADIM AKHTAR  
[MEMBER]



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DILBAG SINGH SIHAG  
[MEMBER]