



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 145 OF 2022

Sanjeev Kumar Sharma

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Nadim Akhtar  
Dilbag Singh Sihag**

**Member  
Member**

**Date of Hearing: 27.10.2022**

**Hearing : 4<sup>th</sup>**

**Present:** - Mr. Deepak Kohli, Ld. Counsel for the complainant through VC.  
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. 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 he booked an apartment in

respondent's project named 'Discovery Park, Sector-80, Faridabad, on 07.09.2010. Flat Buyer Agreement (BBA) was executed between the complainant and respondents on 02.11.2012 for unit bearing no. M-503, 5<sup>th</sup> floor with a tentative super area of 2440 square ft. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to 02.05.2016. Complainant has paid an amount of Rs. 31,29,920.05/- against basic sales price of Rs. 67,10,000/-.

2. In support of his contention regarding payment of an amount of Rs. 31,29,920.05/- complainant has annexed receipts of payment issued by the respondent.
3. Complainant has also alleged that respondent did not start construction of their project by 2014-15. Partial occupation certificate has been received on 31.10.2018 without proper that amenities like STP, Club house, Swimming Pool, Sports Facilities and shopping areas etc. Further, it is alleged that main power supply is not as per requirement, less capacity of DG power backup, super built-up area has been increased to the tune of 13-17%, cost has been escalated for Rs. 5-7 lakhs and respondents are charging for maintenance as well. Complainant has prayed for refund of the amount paid by him along with permissible interest.



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. Complainant booked the unit on 27.01.2011 after paying Rs. 4,69,280/- and opted for construction linked plan. Allotment letter was issued on 30.03.2011 for unit bearing no. M-503, Tower M tentatively admeasuring 2440 sq. ft.
- ii. Provisions of RERA Act do not apply on the agreement executed prior to coming into force of the RERA Act. Respondents have argued that agreements executed prior to commencement of RERA Act, 2016 should be dealt with in terms of clauses of the said agreement.
- iii. Complainant has defaulted in making timely payment and has defaulted under section 19(6) and 19(7) of the RERA Act, 2016. Respondent issued various reminders dated 31.05.2012, 04.07.2012, 05.09.2012, 01.03.2013, 24.12.2013, 25.09.2015, 28.09.2015, 30.10.2015 and last and final opportunity letter 01.12.2015. Complainants' unit was finally terminated on 23.11.2018.

- iv. Respondent denies that amenities are incomplete in their Project Discovery Park.
  - v. Possession has been delayed due to force majeure and default in timely payment by majority of customers. 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. His unit is nowhere near 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. Authority has gone through respective written submissions as well as verbal arguments put forth by both sides while passing following orders:
- i. Complainant admittedly paid an amount of Rs. 31,29,920.05/- and the same got verified from receipts submitted by her.
  - ii. No specific time period has been committed by the respondent for its completion. 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, then complainants would be entitled to relief of refund as he cannot be forced to wait for completion of project for infinity.

iii. 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.

iv. With respect to argument of the respondent that complainant has delayed the payment on multiple counts it is observed that complainant may have delayed the payment but has made all payments till December 2013 and stopped making payments after this date. Respondent sent various reminder letters dated 25.08.2015, 28.09.2015 and 30.10.2015 and finally terminated complainant's unit on 23.11.2018. Obligation which was left on the part of the respondent was to refund the amount paid by the complainant. Respondent has failed to discharge his obligation by not refunding the amount. In these circumstances, refund in this

case is admissible. 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.

- v. 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.
- vi. The total interest for the period ranging from receipt of payments to date of this final order (27.10.2022) in terms of Rule 15 of HRERA Rules, 2017 i.e., @ 10.25 % payable by the respondents to the complainants works out to Rs. 31,29,920.05/-
- vii. The Authority hereby orders that the respondents shall refund the principal amount of Rs. 31,29,920.05/- plus interest amount of Rs. 33,57,303/- 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.

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



.....  
**NADIM AKHTAR**  
**[MEMBER]**



.....  
**DILBAG SINGH SIHAG**  
**[MEMBER]**

