



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 144 OF 2022

Manmohan Somani

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

CORAM: Nadim Akhtar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 27.10.2022

Hearing : 4th

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 07.11.2010 after paying Rs. 3,73,000/-. An allotment letter dated 17.11.2012 was issued vide which Flat no. G-1104 with 1380 sq. ft area was allotted to the complainant. Flat Buyer Agreement (BBA) was executed between the

complainant and respondents on 31.10.2013. In terms of clause 3.1 of the BBA, possession was supposed to be delivered within 36+6 months, which works out to 31.04.2017. Complainant has paid an amount of Rs. 37,29,410.04/- out of the basic sales price of Rs. 49,68,000/-.

2. Complainant has alleged that respondent did not start construction of their project in 2014-15. It is alleged that project is not habitable. Partial occupation certificate has been received on 31.10.2018. Complainant further alleges that amenities like STP, Club house, Swimming Pool, Sports Facilities and shopping areas etc has not been provided in the project. It is submitted 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.

3. 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 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 30.06.2014,



17.03.2015, 16.04.2015, 25.06.2015, 08.09.2015, 19.05.2017 and 10.11.2017.

- ii. Respondent has terminated the unit not once but twice that is on 08.09.2015 and 10.11.2017.
- iii. 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.
- iv. Respondent admits to have been received an amount of Rs. 37,29,410.04/- from the complainant.
- v. Respondent has received occupation certificate for the complainant's unit on 31.10.2018.

5. Both parties have argued their case at length. Complainant reiterates his pleading as recorded in para 3 of this order. Accordingly, he presses for refund of the amount paid by him along with interest as applicable under the Rules. Ld. counsel for the respondent argues that complainant had been continuously defaulting in payment of his instalments and is a habitual defaulter. He referred to various letters dated 26.06.2015, 08.09.2015, 11.04.2017 and 12.05.2017 wherein complainant was issued reminders with respect to payments.

Complainant in this case had stopped making payment in July 2014 whereby due date of possession was in the year 2017. He submitted that had complainant made payments as per the schedule, respondent would have offered possession as complainant's unit received occupation certificate on 31.10.2018.(delay of approx. 1 year only)

6. 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. 37,29,410.04/- has been paid by him. Further as per receipts submitted by her this amount got verified.

ii. 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.

iii. On perusal of record, Authority observes that complainant has made payment of his demands till 24.07.2014 and stopped making payment after the said date. Thereafter respondent sent demand letter dated 26.02.2015 following which reminder letters dated 17.03.2015,



16.04.2015, 19.05.2015 and 25.06.2015 were also sent. Complainant failed to make payment of the said demand. Thereafter respondent terminated complainant's unit on 08.09.2015. However, even after termination, respondent sent another letter dated 11.04.2017 for payment of an amount of Rs. 24,64,608/- followed by reminder letter dated 12.05.2017. Respondent himself has not acted in consonance of termination dated 08.09.2015 thereby making said termination null. Respondent had finally terminated complainant's unit on 10.11.2017. In this case complainant has prayed for refund of the amount paid by him but the fact that complainant has defaulted in payment of his due instalment shall also be taken into consideration.

iv. RERA provides for Earnest money of 10% of Basic cost price of the unit. This is also a standard market practice. 10% of basic sale price will be deducted as earnest money and remaining amount will be returned to the complainant. Basic sale price in the present matter is Rs. 49,68,000/-. 10 % earnest money will be deducted from the basic sales price. The Authority in order to maintain equity between the parties, directs the respondent to refund paid amount after deduction of earnest money to tune of 10% of basic sales price. Basic sales price is Rs. 49,68,000/- and 10% of it works out to 4,96,800/-. Respondent is liable to refund Rs.

32,32,610.04/- (37,29,410.04 - 4,96,800) along with interest prescribed in Rule 15 of HRERA Rules,2017 for the period ranging from date of payment till the date of order.

v. 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 30,00,660/-.

vi. The Authority hereby orders that the respondents shall refund the principal amount of Rs. 32,32,610.04/- plus interest amount of Rs. 30,00,660/- 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.

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



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NADIM AKHTAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]