

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No.150 of 2022

Date of Decision: 03.02.2023

M/s BPTP Limited, Registered Office at: OT-14, 3rd Floor, Next Door, Parklands Sector-76, Faridabad, Haryana.

Appellant

Versus

1. Mr. Bhupesh Devgun
2. Mrs. Ritu Devgun

Both Residents of 1888/17, Govind Puri Extension,
Kalkaji, New Delhi-110019, India.

Respondents

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by: Shri Hemant Saini, Advocate, Id. Counsel for the appellant.

Shri J.N. Bhandari, Advocate, Id. Counsel for the respondents.

ORDER:

INDERJEET MEHTA, MEMBER (JUDICIAL):

Feeling aggrieved by the order dated 27.07.2021, handed down by the learned Adjudicating Officer of Haryana Real Estate Regulatory Authority, Panchkula, in Complaint No.2199 of 2019, titled "Bhupesh Devgun & Another vs. BPTP

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Limited”, vide which, the respondents/allottees were granted compensation, the appellant/promoter has chosen to prefer the present appeal under Section 44(2) of the Real Estate (Regulation and Development) Act, 2016 (hereinafter called ‘the Act’).

2. The respondent/allottees had booked an office space no.107 on first floor having super area of 616 sq. ft. in a project-BPTP Park Central, Sector 85, Faridabad, launched by the appellant/promoter by making the payment of Rs.3,07,725/-. Thereafter, ‘Space Buyer’s Agreement’ (for brevity ‘the agreement’) was executed between the parties on 28.12.2012. Till August, 2013, the respondents/allottees had paid an amount of Rs.27,59,980/- to the appellant against the basic sale price of the unit @ Rs.4150/- per sq. ft. In spite of taking 95% of the amount qua the unit, the possession was not delivered till July, 2016, which the appellant/promoter was liable to give as per the terms and conditions of the agreement. On 01.06.2016, the appellant/promoter sent an email regarding delay in offer of possession and informed the respondents/allottees that the possession would be offered in June, 2018 and also offered the respondents/allottees compensation for delay as per the agreement. Thereafter, on 06.07.2016, the appellant/promoter sent an email offering to

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re-allot another unit at cheaper rate situated at far-off place. The respondents/allottees refused to accept the same. The appellant/promoter had also collected enhanced External Development Charges (EDC) despite the fact that there was stay order from the Hon'ble High Court in CWP No.5835 of 2013 titled 'Balwan Singh and others vs. State of Haryana and others'. The appellant also did not deposit the amount of enhanced EDC with the department of Town & Country Planning, Haryana.

3. Ultimately, having no other option, the respondents/allottees filed a complaint bearing No.380 of 2018 with the Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), which was withdrawn on 06.02.2019 in lieu of settlement arrived at between the parties on 04.02.2019. As per the said settlement-deed, an alternative unit E-40-36-SF having super area of 1047 sq. ft. situated in another project 'Park Elite Floors, Faridabad', was allotted. The possession of the same was to be delivered within seven months i.e. up to 04.09.2019 (wrongly mentioned in the complaint as 04.08.2019), with Occupation Certificate/Completion Certificate. Since, the appellant/promoter did not offer possession within the stipulated seven months, so, the respondents/allottees filed

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the complaint before the learned Authority claiming refund of Rs.27,59,980/- along with interest @ 18% per annum; compensation of Rs.10,00,000/- for delay of more than eight years; Rs.5,00,000/- on account of mental harassment; Rs.1,00,000/- as litigation expenses and Rs.5,00,000/- on account of loss of opportunity.

4. Upon notice, the appellant/promoter while filing reply has taken the stand that vide settlement-deed dated 04.02.2019, the respondents/allottees had agreed to take the new unit i.e. E-40-36-SF in Park Elite floors and they had also undertaken that they would not challenge the same in future at any time. The respondents/allottees had approached various authorities and had also filed complaint no.380 of 2018 before the learned Authority, which was later on withdrawn on account of amicable settlement dated 04.02.2019 and did not seek any liberty to institute the fresh complaint. At the time of execution of settlement-deed, special credit of Rs.14,86,138/- was given to the respondents/allottees, which fact has been concealed by them. The construction of Park Elite floors was going on in full swing, but due to Covid-19, the construction work could not be undertaken at full pace. Further, it has been alleged that the appellant/promoter has raised the demand of EDC on

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28.06.2012, against which the respondents/allottees had made the payment voluntarily on 12.07.2012 and 16.07.2012. The Hon'ble High Court had stayed the operation of Haryana Urban Development Authority memo no.HUDA-CCF-Actt-I-2011/24224 dated 14.07.2011 in the year 2013. While denying all other allegations made in the complaint, the appellant/promoter alleged that in view of the settlement-deed dated 04.02.2019 and undertaking therein that the allottees would not raise any dispute with respect to the previous unit bearing office space no.107, Central Park, the complaint preferred by the respondents/allottees deserves dismissal.

5. After hearing the learned counsel for the parties and appreciating the material on the record, the learned Adjudicating Officer disposed of the complaint filed by the respondents/allottees vide impugned order dated 27.07.2021, with the following observations:-

"9. It was only on 04.02.2019 that settlement was arrived at between the parties. After settlement, on 06.02.2019, Complaint no.380 of 2018 was withdrawn by the complainants which was pending before Hon'ble Authority and relief sought was refund. At the time of settlement, it was agreed that the possession of the alternate unit would be delivered within 7 months i.e., 04.09.2019. Despite that possession has not

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been offered till 27.07.2021. The amount of Rs.27,59,980/- was further being used by the respondent till 27.07.2021. For all these around 8 long years the respondent had been utilizing the amount of Rs.27,59,980/- paid by the complainants which can be termed as disproportionate gain to the respondent and loss to the complainants which can be further termed as a result of continuous default committed by the respondent. It would be in the interest of justice if the compensation to be paid to the complainants is determined after taking into account the default from 28.06.2016 to 04.02.2019 i.e. two years seven months and seven days and further from 04.09.2019 to 27.07.2021 i.e. one year ten months and twenty-three days and utilization of said amount by the respondent. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6% per annum.

Compensation Calculation

Amount Paid (in Rs.)	Time period	Rate	Compensation Amount (in Rs.)
Rs.27,59,980/-	28.06.2016 to 04.02.2019	6%	4,31,918/-
Rs.27,59,980/-	04.09..2019 to 27.07.2021	6%	3,13,958/-
Total			7,45,876/-

10. Sequel to aforesaid discussion, this complaint is allowed. Rs.25,000/- is assessed as cost of litigation to be paid by the respondent to the complainants. Respondent is directed to pay an amount of (7,45,876 +25,000) = Rs.7,70,876/-

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(Seven lakh seventy thousand eight hundred and seventy-six rupees only) to the complainants in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of the amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.”

6. Hence, the present appeal.

7. We have heard learned counsel for the parties and have also perused the case file.

8. Learned counsel for the appellant while drawing the attention of this Tribunal towards clauses 15,16,17 and 19 of the settlement-deed dated 04.02.2019, has submitted that as per the settlement-deed dated 04.02.2019 executed between the parties, the respondents/allottees had agreed to withdraw the earlier complaint filed by them and they had also agreed that all the grievances/claims against the company with regard to the previous unit had been settled and the respondents/allottees had also agreed not to raise any claim against the appellant in future. Further, it has been submitted that in view of the aforesaid settlement deed dated 04.02.2019, the respondents/allottees were not at all entitled to the compensation for the period from 28.06.2016 to 04.02.2019, as granted by the learned Adjudicating Officer. Thus, it has been submitted that the relief of compensation to

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the tune of Rs.4,31,918/- granted by the learned Adjudicating Officer qua the compensation for the period 28.06.2016 to 04.02.2019 be set aside.

9. Per contra, learned counsel for the respondents/allottees has submitted that though as per the aforesaid stipulations of the settlement deed dated 04.02.2019, the respondents/allottees had agreed not to raise any claim qua the previous unit, but the appellant/promoter itself violated clause of the settlement deed as it failed to hand over the possession of the alternative unit within seven months i.e. up to 04.09.2019, from the date of settlement-deed dated 04.02.2019 and thus, the learned Adjudicating Officer has rightly awarded compensation to the respondents/allottees to the tune of Rs.4,31,918/- for the period from 28.06.2016 to 04.02.2019 on the amount deposited by the respondents/allottees with the appellant. Accordingly, there is no illegality and infirmity in the impugned order handed down by the learned Adjudicating Officer and the present appeal deserves to be dismissed.

10. We have duly considered the aforesaid contentions.

11. At the outset, it is pertinent to mention that though at the time of filing of the present complaint before the learned Adjudicating Officer, the respondents/allottees had claimed

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the relief of refund of Rs.27,59,980/- along with interest @ 18% per annum and compensation under various heads, as referred above, but as mentioned in para no.6 of the impugned order, learned counsel for the respondents/allottees had withdrawn all the reliefs except compensation. Thereafter, the present complaint was adjudicated by the learned Adjudicating Officer only qua the compensation claimed by the respondents/allottees.

12. During the pendency of this appeal before this Tribunal, vide interlocutory order dated 07.03.2022, following observations were made:-

“Learned counsel for the appellant has not raised any objection with respect to the award of Rs.3,13,958/-. Let the execution proceedings before the learned Adjudicating Officer be kept in abeyance till the next date of hearing. However, the un-disputed amount of Rs.3,13,958/- and Rs.25,000/- the costs of litigation, be remitted to the learned Adjudicating Officer for disbursement to the respondents-allottees, as per rules.”

13. In view of the aforesaid observations, in the present lis now only dispute is regarding the amount of compensation of Rs.4,31,918/- which the learned Adjudicating Officer ordered to be paid to the respondents/allottees for utilization of the amount of Rs.27,59,980/- @ 6% per annum w.e.f.

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28.06.2016 to 04.02.2019. During the course of arguments, learned counsel for the respondents/allottees has admitted that the respondents/allottees have preferred a complaint before the learned Authority to claim the refund of an amount of Rs.27,59,980/-, which they had deposited with the appellant/promoter along with interest at the prescribed rate for the period from 28.06.2016 to 04.02.2019.

14. Admittedly, the earlier complaint bearing no.380 of 2018 preferred by the respondents/allottees with the learned Authority was withdrawn by them on 06.02.2019 in lieu of the settlement arrived at between the parties on 04.02.2019. As per the said settlement deed an alternative unit no.E-40-36-SF having super area of 1047 sq. ft. situated in another project 'Park Elite Floors, Faridabad', was allotted. As per clause 8 of the said settlement deed dated 04.02.2019, the possession of this aforesaid alternative unit was to be delivered to the respondents/allottees by the appellant/promoter within seven months i.e. up to 04.09.2019. As observed by the learned Adjudicating Officer in the impugned order, despite that undertaking of delivering the possession up to 04.09.2019, the possession of this alternative unit was not offered to the respondents/allottees till 27.07.2021 and the learned counsel for the appellant could not dispute this fact. Though, as per

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the aforesaid clauses no.15, 16, 17, and 19, the respondents/allottees had agreed to withdraw the earlier complaint, which eventually they had withdrawn on 06.02.2019, and had also agreed that they would not raise any claim regarding the earlier allotted unit in future, but the same was subject to the stipulation of clause 8 of the settlement-deed dated 04.02.2019, as per which the appellant/promoter was bound to hand over the possession of the alternative allotted unit to the respondents/allottees on 04.09.2019, which it has miserably failed to hand over the same. Thus, there is no illegality and irregularity in the compensation awarded to the respondents/allottees in the compensation awarded to the respondents/allottees to the tune of Rs.4,31,918/- by the learned Adjudicating Officer for the period 28.06.2016 to 04.02.2019 on the deposited amount of Rs.27,59,918/-, as the same amounted to disproportionate gain to the appellant/promoter.

15. No other point has been urged before us.

16. Resultantly, as a consequence to the aforesaid discussion, the appeal preferred by the appellant containing no merit deserves dismissal and is dismissed accordingly.

17. As per the report made by the office, in compliance with the order dated 07.03.2022 of this Tribunal, out of the

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total amount deposited by the appellant/promoter to comply with the proviso to Section 43(5) of the Act, i.e. Rs.7,70,876/-, an amount of Rs.3,38,958/- was remitted to the learned Adjudicating Officer on 07.04.2022 for its disbursement to the respondents/allottees.

18. The remaining amount of Rs.4,31,918/- deposited by the appellant/promoter with this Tribunal, along with interest accrued thereon be sent to the learned Authority for disbursement to the respondents/allottees, subject to tax liability, if any, as per law and rules.

19. The copy of this order be communicated to the parties/learned counsel for the parties and the learned Authority for compliance.

20. File be consigned to the record.

Announced:
February 03, 2023

CL

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)