



Complaint no. 656/2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 656 of 2021

Madan Ram and others

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

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

**Member
Member**

Date of Hearing: 31.01.2023

Hearing-7th

Present: - Ms. Srishti Girdhar, Counsel for the complainant through VC
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER (NADIM AKHTAR-MEMBER)

1. Ld. counsel for respondent referred to detailed order dated 23.02.2022 passed by this Authority whereby it has been observed that present complaint is not maintainable and complainant may approach other appropriate forum for redressal of his grievances.

2. Ld. counsel for complainant stated that present complaint is maintainable as respondent has acted in violation of Section 11 (4) of RERA Act,2016 by not transferring common areas to association of allottees. Furthermore, no proper resident welfare association has been formed till date. Respondent is under obligation to fulfill all his responsibilities as provided under RERA Act,2016.
3. In view of above statement of ld. counsel of complainant, the Authority observed that present complaint has been filed seeking following reliefs:-
- a) Pass an order for refund of the amount paid against Club Charges, STP and Electric Sub-Station along with pendent lite and future interest thereon as per the RERA rules, 2017 from the due date of payment till the date of actual payment, in favour of the Complainants and against the Respondents, his legal representatives, heirs.
 - b) Pass an order for refund of the Maintenance charges paid so far along with interest and also in what manner the further charges will be charged and what kind of services will actually be provided at the end of the Respondents.
 - c) That to re-do the automatic renewal of the BMPS Agreement done unilaterally at the end of the Respondents as the same should and needs to be done mutually between the parties.



- d) That to compensate the Complainants for usage of sub-standard goods and not adhering to all the specifications in terms of construction as undertaken by the Respondents in terms of the BBA.
- e) That to refund the extra-registry charges taken during execution of conveyance deed along with interest in whichever case applicable.
- f) That a workable solution and calculation should be provided by the Respondents in terms of the GRID payment and as well as the maintenance which should be based on true and actual consumption of the services and not on the super area of the unit.
- g) That to direct the Respondents to not harass the Complainants herein on any pretext whether CAM or any other charges as the same is illegal and amounts to harassment and injustice.
- h) That to direct the Respondents to undertake their responsibility under the BPMS and under the BBA for providing with services for which the Complainants have paid under the BPMS as well as the BBA.
- i) That to direct payment of delayed charges wherein the unit was delayed beyond the promised Possession date.
- j) Pass such other order(s), direction(s) relief(s) as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case and in the interest of justice.



4. It is pertinent to mention here that detailed order dated 23.02.2022 has already been passed by Authority whereby it has been observed that present complaint is liable to be dismissed for the reasons that it is time barred and as such neither any relation of allottee-promoter between the parties nor any cause of action survives in respect of relief claimed by complainant for proceeding with this complaint. Said order is reproduced below for reference:-

Today is 4th hearing of this case. It was first heard on 19.08.2021 when Authority has observed that 16 complainants-allotees have filed this complaint for similar cause of action seeking relief of refund of excess charges taken by respondent on account of club membership, STP, electric sub-station, registration charges, maintenance charges etc. In the complaint, however, factual details of only one complainant Mr. Madan Ram was provided. Accordingly, this complaint was decided to be prosecuted in respect of complainant Madan Ram of which facts had been submitted. Liberty however was given to remaining 15 complainants who wished to seek such relief from the Authority, to file their separate complaints citing therein their own individual facts. Relevant part of the order is reproduced below for reference:-

“On perusal of complaint file it is observed that this complaint has been filed by 16 complainants-allotees on same cause of action seeking relief of refund of excess charges taken by respondent on account of club, STP, electric sub-station, registry charges, maintenance charges. In the complaint however, factual

details pertaining to only one of the complainant i.e. Mr. Madan Ram has been provided. Accordingly, this complaint will be prosecuted in respect of the complainant Madan Ram only. It is further observed that facts and figures of each of the complainant may differ and the amount of refund sought also may differ. The Authority may have to pass separate orders in respect of each complainant. Accordingly, if remaining complainants wish to seek relief from the Authority, they should file separate complaint citing therein their own individual facts. It may not be possible to award relief to all the complainants on the basis of facts of one of the complainants".

2. *Subsequently the case was adjourned granting time to respondent to file their reply. As per office record, reply has already been filed by the respondent. Copy of same was supplied to complainant on 10.01.2022.*

3. *Today, Ld. counsel for complainant again reiterated her prayer for proceeding with this case on behalf of all 16 complainants-allotees. Authority is unable to accept the request for the reasons already recorded in previous order dated 19.08.2021 reproduced above. Further, liberty has already been granted to remaining 15 complainants-allotee to file their own individual complaints vide said order. So, they may file their individual complaints.*

4. *The complainant's case is that he is a subsequent allottee in the respondent's project-Park Elite Floors, Faridabad. He had purchased unit no. Q-11-12-GF having area of 1418 sq ft from Mr. Vinod Kumar on 28.07.2010. The flat buyer agreement was entered between the*



parties on 18.08.2010. In terms of clause 4.1 of the FBA, possession was supposed to be delivered by 18.02.2013. An amount of Rs 29,04,997/- stood paid upto 2013 against basic sale price of Rs 25,56,002/-. Thereafter, respondent offered possession of unit on 18.01.2013, following which, conveyance deed was also executed on 03.05.2013. Now complainant is raising grievances/issues for refund of club, STP and electric sub station, maintenance and registry charges and compensation on account of using sub-standard goods and not adhering to specifications of construction as undertaken by respondent in the BBA and for maintenance services in terms of maintenance agreement. Hence, present complaint.

5. At the time of hearing, a specific query was put up to Ld. counsel for complainant as to how this complaint is maintainable for the reliefs claimed by complainant after lapse of 8 years from the execution of conveyance deed. In reply Ld. counsel argued that this case is not for possession of unit or refund of paid amount but is rather for refund of unjustified charges taken by respondent alongwith deficiency in maintenance services. Ld. counsel argued that present complaint is maintainable.

6. Rebutting arguments of complainant's counsel, ld. counsel for respondent argued that relation of promoter and allottee had come to an end in year 2013. Now after 8 years, this complaint is barred by limitation in respect of relief claimed by the complainant.

7. Upon hearing arguments of both parties Authority is of view that complainant has

approached this Authority after 8 years of taking possession and execution of conveyance deed for the relief of refund of excess charges taken by respondent on account of club, STP, electric sub-station, registry charges, maintenance charges etc. which was paid between year 2012-2013, and also compensation on account of using sub-standard goods and seeking direction against the respondent to provide maintenance of services in terms of maintenance agreement. As such neither any relation of allottee-promoter between the parties nor any cause of action survives in respect of relief claimed by complainant for proceeding with this complaint. This complaint is also barred by limitation in respect of reliefs prayed by complainant, as such Authority cannot proceed with this complaint at this stage. For these reasons, this complaint is liable to be dismissed.

8. *Ld. counsel for complainant has sought time to review and alter the relief sought in the complaint. Authority however is of view that this complaint is not maintainable and complainant may approach other appropriate forum for redressal of his grievances. However, upon request of complainant's counsel this case is adjourned to 05.05.2022 for final decision regarding maintainability of complaint.*

5. Despite availing time, complainant has failed to make any amendment to the relief sought in the complaint filed before the Authority. Further even today ld. counsel for the complainant is unable to satisfactorily provide reasoning/justification regarding maintainability of this complaint after a lapse of 8 years from execution of conveyance deed

in year 2013. Keeping in view the fact there is no fresh substantive argument w.r.t to maintainability of present complaint so the order dated 23.02.2022 already passed by this Authority containing detailed reasoning and observations hereby attains finality and accordingly, complaint is dismissed as not maintainable.

6. File be consigned to record room.

Geeta

DR. GEETA RATHEE SINGH
[MEMBER]

Nadim

NADIM AKHTAR
[MEMBER]

