

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

Appeal No. 64 of 2022
Date of Decision: 16.11.2023

1. Mohit Manchanda son of Prem Chand;
2. Menka Pathria wife of Mohit Manchanda
Both are residents of House No.611 FF, Sector 5,
Gurugram (Haryana) 122001;
3. Avneesh Manchanda son of Prem Chand, resident of House
No.44, Street No.9, Ferozpur Cantt. Punjab 152001.

Appellants

Versus

1. M/s BPTP Ltd., registered office at 28, ECE House, 1st
Floor, KG Marg, New Delhi 110001
2. M/s HDFC Ltd. registered at the Capital Court, Munirka
Outer Ring Road, OLOF Palme Marg, New Delhi 110067

Respondents

CORAM:

**Justice Rajan Gupta
Shri Anil Kumar Gupta**

**Chairman
Member (Technical)**

Present: Mr. Mohit Manchanda,
one of the appellants in person, along with
Mr. Arun Singla, Advocate,
for the appellant.

Mr. Hemant Saini, Advocate
for respondent no. 1.

Mr. Yashvir Singh Balhara, Advocate,
for respondent no. 2 (HDFC Bank).

ORDER:

Rajan Gupta, Chairman (Oral):

It appears that appellant-allottees applied for a residential Floor Space, pursuant to the instant project launched by the builder-promoter running in the name and style of M/s BPTP ltd. It appears that builder already had a licence no. 15 dated

07.03.2011 from the competent Authority. Builder Buyer's Agreement (BBA) was executed between the parties on 21.11.2013. Resultantly, residential floor D-58-SF measuring 1080 sq. ft. was allotted to the appellant-allottees. Total sale consideration for the unit is Rs. 91,27,727/- out of which, the appellant-allottees paid an amount of Rs. 36,58,724/-. Due date of delivery of possession was comes out to as 21.05.2017. Admittedly, there was considerable delay in offering the possession. It is pertinent to mention here that appellant-allottees took a loan from HDFC Bank Ltd. (respondent no. 2) herein for an amount of Rs. 21,93,432/-.

2. On 14.06.2018, appellant-allottees filed a complaint before the Haryana Real Estate Regulatory Authority at Gurugram (hereinafter called 'the Authority') inter alia praying for refund of Rs. 36,58,724/- along with interest @ 18% and to direct the respondent to cancel all demands raised post the submission of legal notice.

3. Respondent rebutted the claim. At the time of final disposal of the matter, the complainant gave consent to forego 10% of the basic sale price towards earnest money. Accordingly, respondent was directed to refund the deposited amount after deduction of the 10% of the earnest money, along with pre-EMIs paid by the complainant. A statement of accounts duly signed by both the parties was taken on record and forms part of the order passed by the Authority. Same is reproduced hereunder for ready reference:

Amount paid by the complainant	Rs. 14,65,292/-
Amount paid by HDFC Bank	Rs. 21,93,432/-
Pre-EMI due	Rs. 2,74,185/-
Amount to be deducted @ 10% of BSP	Rs. 8,12,495/-

4. The authority, thus, directed to refund the amount paid by the complainant after deducting 10% of basic sale price. It also directed that respondent could settle the matter with regard to Pre-EMIs under the Subvention scheme with the HDFC Bank. The respondent would also refund Pre-EMI amount paid by the buyers on account of default on the part of the respondent. The amount would be refunded to the complainant along with interest @ 10.75% from the date of receipt of payments and matter would be settled within 90 days of the passing of the order.

5. It, however, appears that respondent no. 1 (M/s BPTP Ltd.) did not comply with the order immediately. Respondent no. 2 (HDFC Bank Ltd.) filed an appeal i.e. Appeal No. 366 of 2019 before this Tribunal against the order passed by the Authority which was disposed of by this Tribunal vide order dated 28.01.2020. Operative part of the order reads as under:

8. So, the impugned order dated 07.02.2019 is hereby modified that out of the amount to be refunded by the respondent no.4 to the respondents no.1 to 3/allottees, firstly the claim of the appellant-Corporation shall be satisfied as per the tripartite agreement dated 21.11.2013 and the loan documents and the remaining amount shall be disbursed to the respondents no.1 to 3/allottees in accordance with law. With this modification/observation, the appeal stands disposed of.

9. File be consigned to records.”

6. Thereafter, respondent no. 1 (BPTP Ltd.) also filed an appeal i.e. Appeal No. 03 of 2023 impugning the procedure adopted by the Executing Court. Same was disposed of vide order dated 16.03.2023. However, admittedly, by that time, the Executing Court itself had rectified its own order by subsequent order dated 03.01.2023.

7. At present execution proceedings initiated at the behest of appellant-allottees are pending before the Executing Court, wherein appellant-allottees are seeking execution of the order of the Authority. In view of the pendency of the same, we feel that the Executing Court can decide all the issues in terms of the order passed by the Authority and ensure that the execution of the decree is taken to its logical end. It was brought to the notice of this Tribunal that two cheques amounting to Rs. 20,66,831/- were remitted by respondent no. 1 (BPTP Ltd.) to the respondent no. 1 (HDFC Bank Ltd.). As per counsel for the bank, cheques are no longer valid as these have outlived their duration.

8. Mr. Hemant Saini and Mr. Yashvir Singh Balhara counsel representing respondents no. 1 & 2 respectively undertake that they will cooperate with the Executing Court in its proceedings in every manner.

9. We, thus, dispose of this appeal with liberty to the Executing Court to proceed further with the matter and decide the same expeditiously, in any case, not later than four months.

10. As appeal has been disposed of on merits, the delay in filing the appeal is deemed to have been condoned.

11. Copy of this order be communicated to the parties/learned counsel for the parties and the Haryana Real Estate Regulatory Authority, Gurugram.

12. File be consigned to the record.

Justice Rajan Gupta
Chairman
Haryana Real Estate Appellate Tribunal

Anil Kumar Gupta
Member (Technical)