



Complaint No. 31 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 31 OF 2019

Ram Kripal Yadav

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

**CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag**

**Chairman
Member
Member**

Date of Hearing: 24.10.2019

Hearing: 6th

**Present: Shri Ram Kripal Yadav, Complainant in person
Shri Hemant Saini, Counsel for the Respondent.**

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ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. Complainant's case is that he purchased a flat LM4-40 measuring 1203 sq. ft. in the project namely 'Park Elite Floors' from a third party on 09.03.2010 after payment of Rs. 7.93 lacs against basic sale price of Rs. 21.87 lacs. Remaining amount was to be paid through loan from LIC Housing Finance limited. He made a payment of Rs. 17.35 lacs till 18.06.2012. He further stated that respondent raised a demand of Rs. 3.63 lacs on account of enhanced area on 20.12.2012. The financier LIC Housing Finance limited of the complainant asked the respondent M/s BPTP Limited to submit documents related to renewal of license, inventories detail and revalidation of the project for increased cost but respondent did not submit the requisite documents.

During Dec. 2012 to April 2013, complainant has sent several e mails to BPTP reminding for documents required to be submitted by him to LIC Housing Finance limited. Instead of submitting documents, respondent asked the complainant, to shift home loan from LIC to HDFC or India bulls. Complainant agreed to shift the home loan and requested respondent to provide latest account statement to proceed for new home loan. However, no assistance received from the respondent in this regard.



Therefore, complainant prays for refund or possession along with delay interest at the rate of 18 % p.a and compensation for financial loss occurred in litigation, great mental tension, agony and harassment.

2. On the other hand, refuting the allegations, respondent has pleaded in his written submissions that flat buyer Agreement was executed with the complainant stands terminated on 03.07.2013 on account of repeated default of payments on the part of the complainant. Only first instalment was made in time. Therefore, said termination in 2013 makes the complaint barred by limitation. He further stated that he requested the complainant to take his refund vide an email dated 01.11.2013 annexure R-27 of the written statement but he did not turn up. Moreover, relief sought by the complainant is beyond agreed terms of the Flat buyer Agreement. Lastly, he averred that agreements executed prior to coming in to force of the RERA, cannot be reopened and shall be binding on the parties.

3. As per FBA executed between the parties, the parties agreed to settle the matter amicably and if the matter is not settled amicably to refer the dispute to arbitration. He further pleaded that super area of the flat was tentative and the increase in the same was intimated vide letter dated 20.12.2012. Lastly, he also averred that he has already submitted all requisite documents for disbursal of loan and LIC HFL had already started disbursement as well.

4. Parties have been heard and record has been perused. The Authority orders as follows:-

i) Authority vide its orders dated 02.04.2019 and 20.08.2019 had directed respondent to submit proof regarding supply of necessary documents for disbursal of loan amount. But respondent failed to submit requisite documents meaning thereby there is no truth in the averment of the respondent on this issue.

ii) Secondly, respondent's claim that the complaint is barred by limitation has no merits. This objection is not sustainable as respondent terminated FBA in 2013 but money amounting to Rs. 17.35 lacs was not refunded to the complainant by him. Rather kept it and use for his consumption. Therefore, complaint cannot be barred by limitation as there is subsisting obligation remains to fulfil by respondent towards complainant.

iii) Thirdly, contesting maintainability on the ground that allegations raised requires proper adjudication by tendering evidence, cross examination has also no merits. Complaint is maintainable before this Authority as the object of establishing Real Estate Authority is to protect the interest of consumers in the



real estate sector and to establish an adjudicating mechanism for speedy dispute redressal of the matters.

iv) Fourthly, respondent has also challenged the jurisdiction of this Authority on the ground that agreement executed between the parties prior to coming into force of RERA Act does not have any merits. The objection is not sustainable in view of detailed orders passed by this Authority in complaint case no. 144- Sanju Jain Vs. TDI Infrastructure Ltd. The logic and reasoning mentioned in the orders of that complaint are fully applicable in this case as well. Since the core of the contract between the two parties still remains to be discharged, this Authority will have jurisdiction to entertain the complaint and settle the dispute.

v) Fifth objection raised that as per agreement, complainant was supposed to first refer the matter to the Arbitrator. This is not acceptable because RERA provides comprehensive remedies to home buyers in all such projects which are launched before coming into force of RERA Act. Wherever substantive obligations on part of either of the parties subsist, RERA Authority will have jurisdiction to deal those matters.



vi) Authority observes that respondent has not mentioned anywhere in his written and verbal statements the status of construction of the project. In view of non-committal of respondent with regard to date of completion of the project, the Authority directs the respondent to refund the entire amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % from the date amounts were paid till the actual realization. Since complainant as well as respondent has not given the exact date of payments by complainant. Authority has taken the amount of Rs. 17.35 lacs paid by the complainant to the respondent from a letter of respondent dated 22.03.2013 page 93 of the complaint as principal amount and from this date the Authority has calculated the interest component till the date of order. Accordingly, the amount is Rs. 29,31,947.23. Fifty percent of the total sum of money payable to the complainant shall be paid within 45 days from the date of uploading of this order and remaining in next 45 days.


vi) With regard to the compensation for financial loss occurred in litigation, great mental tension, agony and harassment, the Authority

observes that such relief can only be adjudicated by the Adjudicating officer as per the provisions of Section 72 of RERA Act. So, the complainant may approach to Adjudicating officer by filing a separate complaint.


The complaint is accordingly, **disposed of**. Cost of Rs. 5000/- payable to the Authority and Rs. 2000 payable to the complainant shall also be paid by the respondent. Files be consigned to record room after uploading order on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]