



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 609 OF 2019

Nalin Madan

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

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

**Chairman
Member
Member**

Date of Hearing: 24.10.2019

Hearing: 4th

Present: M.M Madaan for the complainant.

Shri Hemant Saini, Counsel for the Respondent.

2

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. Complainant's case is that a flat bearing no. H2-32-FF was allotted in 'Park Elite Floors' project of the promoter respondent vide allotment letter dated 24.12.2009. Complainant visited the site and found that there was no progress at site. Later on, another flat in 'Park Elite Floors' bearing number PE-176-FF having an area of 1510 sq. ft. was re allotted vide letter dated 12.06.2012. Flat buyer agreement was executed on 26.12.2012. Possession of the said flat was to be given by Dec 2014 as per this Agreement. Complainant had paid Rs. 24,26,746/- against total sale consideration of Rs. 31,07,332.12/- till date. Complainant seeks possession with compensation for delayed construction of the flat and also compensation for mental agony. Now, he sought relief of refund.

2. On the other hand, refuting complainant's allegations, respondent in his written reply has pleaded that complaint is not maintainable as this Hon'ble Authority does not have jurisdiction. Moreover, 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 states that the complaint is not maintainable as the allegations raised requires proper adjudication by tendering evidence, cross examination etc. Lastly, he pleaded

that delay in offering possession of the unit was due to force majeure circumstances. He further states that construction is underway and endeavoring to complete it at earliest but he is absolutely non-committal when the project will be completed and possession to the complainant allottee be given by which date.

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

i) Respondent has challenged the jurisdiction of this Authority without elaborating the reasons thereof. This objection is not sustainable in view of the detailed orders passed by this Authority in complaint case no. 144- Sanju Jain Vs. TDI Infrastructure Ltd. The logic and reasoning recorded in the orders of that complaint are fully applicable in this case as well. Moreover, 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.

ii) Second objection raised by the respondent is that as per agreement, complainant was supposed to first refer the matter to the Arbitrator. This is also not acceptable as RERA provides comprehensive remedies to home buyers in such type of the projects launched even before coming into force of RERA Act. Wherever substantive obligations on the part of either parties subsist, Authority

has jurisdiction to deal and adjudicate all such matters arising between allottee and promoter.

iii) As far as maintainability of complaint (which requires proper adjudication by tendering evidence, cross examination etc.) is concerned, complaint is maintainable before this Authority as the object of establishing the 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) In nutshell, Authority observes that there is a delay of more than 5 years and as of now respondent is absolutely non-committal about the date by which he will be in a position to handover possession of the booked property. Therefore the Authority has no hesitation in allowing the complainant for refund with delay interest and therefore, directs the respondent to refund 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 of receiving money till actual realization. Total amount along with interest calculated as above is Rs. 45,50,639/- as per details given in table on next page.



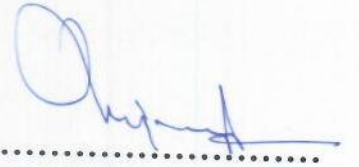
Serial No.	Date of Payment	Principal Amount	Interest
1	02.06.2009	3,00,000/-	3,25,954/-
2	19.08.2009	3,19,831/-	3,40,358/-
3	21.10.2009	2,80,731/-	2,93,685/-
4	19.12.2012	1,20,237/-	86,060/-
3	08.01.2013	3,52,470/-	2,50,264/-
4	06.11.2013	3,38,540/-	2,05,674/-
5	29.11.2013	3,52,469/-	2,17,466/-
6	07.10.2017	3,20,737/-	68,687/-
	Total	27,62,491/-	17,88,148/-

So, fifty percent of the total sum payable to the complainant shall be paid within 45 days from the date of uploading of this order and remaining in next 45 days.

v) With regard to the compensation for mental agony, 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.

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Disposed of. Files be consigned to record room after uploading order on the website of the Authority.



**RAJAN GUPTA
(CHAIRMAN)**



**ANIL KUMAR PANWAR
(MEMBER)**



**DILBAG SINGH SIHAG
(MEMBER)**

