BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM.

Complaint No. :531 of 2024
Date of Decision: 08.005.2026

Ajay Kumar C/o Sushila Sadan, Indrapuri-2, Ratu Road, Ranchi, Jharkhand- 834005.

...............Complainant.

Versus

BPTP Limited & (ii) Countrywide Promoters Pvt. Ltd., registered office at M-11, First Floor, Middle Circle, Connaught Circus, New Delhi-110001.

............Respondents.

APPEARANCE

For Complainant: Mr. Sukhbir Yadav, Advocate.
For Respondents: Mr. Harshit Batra, Advocate.

ORDER

This is a complaint filed by Mr. Ajay Kumar (allottee), under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016) read with Rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 against BPTP & M/s Countrywide Promoters Pvt. Ltd. (promoters/developers).

AO

2. Briefly stated, according to the complainant, believing in the representation and assurances of the respondents, he (complainant) purchased an apartment bearing flat no. Q-1806 on the 18^{th} floor in tower Q admeasuring 1000 sq. ft. in the project "Park Spacio". Said project was developed and marketed by the respondent. He (complainant) opted for Construction Link payment plan. Total sale consideration of said flat was agreed at Rs.34,62,500/- including basic sales price, covered parking charges, development charges & IFMS etc. The payment plan has been on page no. 27 of Apartment Buyer Agreement (ABA) from original allottee. At the time of accepting the application money, the respondents assured for the delivery of the luxury project with several specifications i.e. Adequate power backup, 5 acres of manicured greens, a shopping complex, a world-class club, an Olympic length Pool, state of the art Gym, Table Tennis a badminton court, Card Room, Yoga Room, Multicourt, Pool Table and Kids play area.

3. That on 23.08.2010, the respondents issued a payment receipt in favour of Gitika Verma & Tilak Raj Verma (Original Allottees) of Rs.2,57,050/- as booking amount. On

AO

12.11.2010, the respondents sent an allotment letter in favour of original allottees, confirming the allotment of Unit No. Q-1806 on the Eighteenth Floor in Tower- Q, measuring 1000 Sq. Ft.

4. That on 04.04.2011, a pre-printed, unilateral, ex-facie and arbitrary Builder Buyer's Agreement/Buyer's Agreement (hereinafter called the "BBA/FBA") was executed between the respondents and the original allottees. As per clause 3.1 of the BBA, the respondents had to give possession of the flat within 36 months from the date of booking of the flat, which was booked on 23.08.2010. Therefore, the due date of possession was 23.08.2013.

5. That on 06.03.2017, respondents issued permission to transfer of the unit to the original allottees for transfer in favour of the complainant. On 01.05.2017, the respondents sent a Nomination letter in favour of the complainant in respect of the flat bearing no. Q-1806, measuring 1000 sq. ft. at Park Space and transferred all the onward rights in favour of the complainant and endorsed his name in its record with immediate effect. The respondents refused to endorse the name of the complainant in

AD

the original BBA dated 04.04.2011 and asked to execute a fresh BBA.

6. That on 29.01.2018, a pre-printed, unilateral, ex-facie and arbitrary Builder Buyer's Agreement/Buyer's Agreement (hereinafter called the "BBA/FBA") was executed between the respondents and the present complainant. As per clause 2.8 of the BBA, the respondents had to give possession of the flat within 36 months from the date of booking of the unit, which was booked on 23.08.2010. Therefore, the due date of possession was 23.08.2015.

7. That as per the offer of possession letter received by the complainant, he had paid Rs.33,30,114/-. The complainant has paid more than 96% of the total sale consideration. On 27.01.2021, the respondent issued an offer of possession letter and demanded various unreasonable demands and the said demand letter contains several unreasonable demands under various heads i.e. Rs.6,34,452/- under the head "Cost Escalation", Rs.86,320/- under the head "Electrification and STP Charges". Moreover, the respondents increased the super area of the flat by 79 sq. ft. without any justification (The original super area was

AO

1000 sq. ft. and the revised super area is 1079 sq. ft.). The notice for possession contains illegal and unjustifiable demands, therefore not tenable in the eyes of the law. Moreover, the respondents did not credit delayed possession interest, as per HARERA and did not provide GST input credit. The respondent asked for the execution of Indemnity Deed cum Undertakings, which are against the provision of law and contain arbitrary clauses.

8. That on 04.02.2021, the complainant sent an email to the respondent and objected the unreasonable demands being raised by it (respondents) in the offer of possession letter. Thereafter, aggrieved by the acts, conduct and deficiencies of the builder/respondents, the complainant filed a complaint before the Hon'ble Authority, Gurugram, i.e. complaint no. 1642 of 2021 and the Authority pronounced the final decision/judgment on the above-said complaint on 10.05.2022. The Authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016, issued some directions to the respondent.

AO

9. That the respondents did not comply with the order of the Hon'ble Authority. Resultantly the complainant filed an execution petition having CRN No. 6627 of 2022 and the same is pending for adjudication. That during the proceedings of the above-said execution petition, the respondent handed over possession for fit out to the complainant, which was received by the complainant on 23.09.2023. A conveyance deed in respect to the complainant's unit has been executed between the respondents and the complainant.

10. Citing facts as described above, the complainant has sought following reliefs: -

i. to grant compensation for the rental cost/loss of Rs.23,28,000/- from August 2015 (due date of possession) to September (date of handover of possession);

ii. to grant compensation on account of depreciation of Rs.7,43,122/-;

iii. to grant compensation of Rs.3,95,773/- on account of loss of interest (for non-payment of DPC from the due date of possession and using the money);

iv. to grant the compensation of Rs.10,00,000/- for causing mental agony;

v. to grant a compensation of Rs.1,00,000/- for travel expenses and loss of work as the complainant had to appear before the Hon'ble Authority (for complaint and execution) for about 20 times on their working days;

vi. to grant the litigation cost of Rs.2,25,000/-;

vii. to grant refund of maintenance charges of Rs.1,16,545/- collected from the complainant prior to the handover of the physical possession of the unit;

viii. Any other relief/direction that the Adjudicating Officer deems fit and proper in the facts and circumstances of the present complaint.

11. The respondents contested the claim of complainant by filing a written reply. It is submitted that this complaint is untenable both in facts and law. It is denied that the respondents are jointly and severally liable. It is clarified that respondent no. 2 is merely a confirming party to the Agreement and hence the name of respondent no.2 should be deleted from the array of parties.

12. That the complainant before purchasing the unit in question had conducted his due diligence and only after being completely satisfied with the status and construction of the unit, same had agreed to purchase the unit in the project of the respondents. The total sale consideration of the unit as stated by the complainant is wrong and denied.

AO

13. That the due date for offer of possession was subjective and not absolute. The original allottees were aware of the terms and conditions under the aforesaid Agreement and after being satisfied with each and every term, they agreed to sign the agreement willingly, voluntarily with free will and full consent.

14. That the Unit was transferred to the complainant from the original allottees vide Nomination Letter dated 01.05.2017 hence the due date of offer of possession shall be calculated from the date of nomination of the complainant.

15. That they (respondents) had duly completed the construction of the project and had obtained the Occupation Certificate from the concerned authorities on 15.01.2021 and hence no delay was ever caused by them (respondents). That the compensation has already been granted by the Authority and the same cannot be granted again, at this stage.

16. Contending all this, the respondents have prayed to dismiss the complaint.

17. Both parties filed affidavits in support of their claims. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

AO

18. At the outset, learned counsel for the respondents -ed claim that the present complaint is not maintainable. The complainant cannot be termed as an allottee within the meaning of Section 2(d) of Act of 2016.

19. Per contra, according to learned counsel for the complainant even if his client was not an original allottee, the same purchased the unit later on, which was endorsed by the respondents. According to him, Act of 2016 allows any aggrieved party to file a complaint not necessarily an allottee.

20. Clause (d) of Section 2 of Act of 2016 defines "allottee" in relation to a real estate project as a person to whom a plot, apartment or building. as the case may be, has been allotted, sold or transferred by the promoter and includes the person, who subsequently acquires the said allotment through sale, transfer or otherwise. Admittedly, the present complainant purchased the unit in question, in the project developed by the respondents and said sale was endorsed by the respondents. All this makes the complainant as an allottee. Even otherwise, Section 31 allows filing of complaint by any "aggrieved person", may or may not he be an allottee.

AO

21. Allotment of apartment i.e. flat No.Q-1806 on the 18th floor in tower Q admeasuring 1000 sq. ft. in the project of the respondents named "Park Spacio" Sector37D, Gurugram, for a sale consideration of Rs.34,62,500/- in favour of one Ms. Gitika Verma & Tilak Raj Verma, present complainant purchased said unit from original allottees named above, it was endorsed by the respondents and a fresh BBA was executed between the complainant and respondents, none of these facts remain in dispute. Further, it is not denied that after issuing offer of possession letter, possession of said unit has already been taken by the present complainant.

22. Admittedly, the present complainant filed a complaint (1642/2021) before the Authority. Said complaint was decided by the Authority along with 36 other complaints. Copy of order has been put on the file. The Authority noted following reliefs having sought by the complainant in that case: -

i. Delayed Possession Charges;

ii. to direct the respondents to provide area calculation;

iii. to direct the respondents to quash escalation cost;

iv. to direct the respondents to give input credit to GST;

AO

v. to restrain the respondents from asking indemnity bond/undertaking for possession of the flat;

vi. to quash the administration charges.

23. Through the present complaint, the complainant has sought compensation for rental cost/loss of Rs.23,28,000/- from August 2015 to September 2023 i.e. the date of handing over of possession.

24. According to Section 18(1) of the Act of 2016, if promoter fails to complete or is unable to give possession of an apartment/plot or building-

(a) in accordance with the terms of agreement for sale or, as the case may be, duly completed by the date specified therein: or

(b) ....

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him------- including compensation in the manner as provided under this Act.

25. Proviso added here makes it clear that where an allottee does not intend to withdraw from the project, he shall be paid interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed. All this shows that in case where an allottee does not intend to withdraw from the project, he shall be paid interest for every month of delay and not the compensation. The parliament did not intend to provide compensation other than DPC in case allottee does not intend to withdraw from the project.

26. Following was held by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra" Appeal No. 70 of 2023 decided on 20.04.2023----------;**

> ***"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exists the projects, the Act expressly provides INTEREST AND COMPENSATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the***

AO

project and not to those who tends to stay in the project."

27. When complainant has already been allowed delayed possession compensation by the Authority for delay in handing over possession of allotted unit, there is no reason to allow separate compensation for same cause of action i.e. delay in delivering of possession.

28. The Haryana Real Estate Appellate Tribunal also in case titled as "TATA Housing Development Company Limited vs. Nitin Singhal & Anr." (Appeal No.737 of 2023) relying upon said judgment ie "Greater Noida Industrial Development's case (supra) held that the allottees, who have already availed the remedy of delayed possession charges and when they (allottees) opted not to withdraw from the project, are not entitled to any additional compensation.

29. It is worth mentioning here that Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, clarifies that for the purpose of proviso to Section 12, Section 18 and sub-section (4) and sub-section (7) of Section 19, the "interest at the rate prescribed" shall be the State Bank of India highest

marginal cost of lending rate + 2%. Provision to award 2% more interest is nothing but to compensate an allottee. When the DPC has already been allowed to the complainant by the Authority along with interest, in view of Rule 15 prescribed above, I find no reason to allow compensation on account of loss of interest or even for depreciation of value. Request in this regard is declined.

30. The complainant has sought compensation of Rs.one lakh for travel expenses and loss of work. Personal appearance of the complainant was not required in this case. The expenses even if done by the complainant are remotely related to this case and hence not allowed.

31. The complainant has sought compensation/refund of maintenance charges of Rs.1,16,545/- collected from him prior to handing over physical possession of subject unit.

32. It is contended by learned counsel for the complainant that his client was forced to pay the said amount, otherwise the respondents refused to hand over physical possession of his unit. Demand of maintenance charges is not disputed on behalf of the respondents. Further said relief was not claimed or allowed by the Authority in the earlier complaint mentioned above. It is also not

denied that there was no provision in the BBA allowing the promoters/respondents to collect maintenance charges and that before possession is handed over. Moreover, it is pointed out that the maintenance charges are collected by some other agency, appointed by the respondents solely. The respondents were not entitled to deny handing over of the possession, unless maintenance charges to be collected by some other firm, are paid. This was an unfair trade practice.

33. The respondents are thus directed to repay/refund the amount of maintenance charges of Rs.1,16,545/- along with interest at the rate of 11% per annum from the date, said amount was collected by the respondent till its realization.

34. The complainant further claimed a sum of Rs.10 lakhs for causing mental agony. Apparently, when the complainant was not allowed possession of his unit despite payment of entire sale consideration by imposing illegal condition i.e. payment of maintenance charges before possession is handed over and also to submit indemnity bonds containing conditions contrary to law all this caused mental agony and harassment to the complainant.

AO

However, Rs.10 lakhs appears to be excessive, the complainant is allowed a sum of rupees one lakh on this count.

35. The complainant has claimed legal cost of Rs.2,25,000/- for earlier complaint and Rs.75,000/- for execution of the order passed by the Authority and further Rs.75,000/- for the present case. The complainant could have claimed litigation expenses from the Authority, which decided the said complainant. However, no court fee is required to be paid to the Authority, while filing such complaint. Even then, it is evident that the complainant was represented by a lawyer during the proceedings of this case, same is allowed a sum of Rs.50,000/- as litigation expenses.

36. The complainant is not found entitled to any other relief.

37. This complaint stands disposed of accordingly. File be consigned to the record room.

Announced in open court today i.e. **on 08.05.2026.**

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram