

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA, HARYANA**

Comp No. : RERA-PKL437/2018

Date : 20.11.2018

No. of Hearing: 2nd

Aditya Shrivastava

...Complainant

Versus

M/s BPTP Ltd.

...Respondent No.1

&

New Age Town Planners Ltd.

...Respondent No.2

CORAM :

Sh. Rajan Gupta
Sh. Anil Kumar Panwar
Sh. Dilbag Singh Sihag

Chairman
Member
Member

APPEARANCE :

Ms. Srishti Girdhar, Counsel for Complainant
Shri Hemant Saini, Counsel for Respondents

Order:

1. On the last date of hearing a cost of Rs.23,000/- was imposed on the respondents on account of non-filing of reply within prescribed time. Today the matter was again taken up for consideration. Both the parties



have put forwarded their arguments before the Authority.Ld. Counsel for respondentsundertakes to deposit the pending cost of Rs.23,000/- with the Authority.

2. Brief facts of the case as stated by Ld. Counsel for complainant are that the complainant is a subsequent transferee of the floor. His predecessor in interest had booked the floor No. PC-73-GF with super area 1025 sq.ft. in the housing project named "Park Elite Floors" in district Faridabad. The Floor Buyer Agreement (hereinafter referred to as FBA) was executed between original allottee and the respondents on 08.03.2012. As per the FBA, the respondent No.2 is the confirming party, which along with its subsidiaries and associate companies is the owner as well as licensee of the land over which this Project is being developed. The respondent No.2 has granted the rights to sell, market and receive payments of the floors in the project to respondent no.1.

Later the complainant bought the floor in question from the original allottee and the nomination in favour of the complainant was made by respondents on 01.11.2013. The payments were to be made under Construction linked payment plan.

Out of the total sale consideration of Rs.23,80,596/-, the complainant has already paid Rs.21.50 lakhs to the respondents. In order to discharge his financial obligations, the complainant has availed loan facility from TATA capital Housing Finance ltd.



As per clause 5.1 of the Agreement, the delivery was to be made within 24 months with additional 180 days as grace period, from the date of execution of the Floor Buyer Agreement. The deemed date of delivery as per FBA was 08.09.2014. The main grievance of the complainant is that despite of payment of more than 90% of the total sale consideration, the respondents have failed to deliver the possession of the floor by the due date of delivery as per FBA.

The complainant sent a Legal Notice dated 22.11.2016 to respondents asking them to make time bound delivery of the floor and payment of delay compensation along with compensation on account of mental harassment etc. The complainant did not receive any reply to the legal notice from the respondents till date.

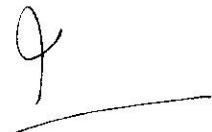
The respondents have issued possession letter on 14.06.2018 and further raised an additional demand of Rs.5,18,703/- from the complainant. The complainant is aggrieved by this exorbitant demand by the respondents in lieu of possession and wishes to withdraw from the project. Thus, in order to seek redressal, the complainant has filed the present complaint before this Authority seeking refund of Rs.21,50,000/- along with interest @ 18% interest from date of payments till the actual date of payment. Further, due to the delay caused by the respondents, the complainant is forced to live in rented accommodation, therefore, the complainant has claimed reimbursement of the rent paid by him till date.



He is also seeking an amount of Rs.1,00,000/- on account of litigation cost.

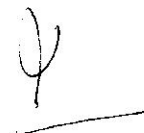
3. The respondents in their reply have denied all the allegations and raised several preliminary objections on the following grounds:

- i) The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present matter because the agreement was executed between the parties prior to the coming into force of the Act, hence, the agreements entered into between the parties shall be binding on the parties and cannot be reopened.
- ii) Further, the present complaint is not maintainable as the floor of the complainant, which is an independent floor, is over a plot area measuring 150.50 sq. mts. which is less than 500 sq. mts thus registration is not required as per section 3(2) (a) of RERA Act, 2016. Even as, as per Guidelines for Registration of Independent floors for the Residential Plots of Licenced Colonies issued by financial Commissioner & Principal Secretary to Govt. Haryana Town & Country Planning Department dated 27.03.2007, registration of independent floors can be allowed in case of residential plots of sizes 180 sq. yards or above and each such dwelling unit shall be designated as 'Independent Floor'

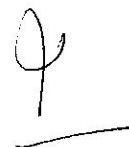


which shall be recognized as a distinct, identifiable property with a separate identification number.

- iii) The respondents have also raised preliminary objection that this complaint is not maintainable as it is not in the format prescribed in regulation of HRERA, Regulations, 2018 as notified on 09.02.2018.
- iv) The respondent has further challenged the maintainability of the complaint on the ground that the parties are bound to refer the matter for arbitration under clause 33 of the Flat Buyer Agreement, in case of failure to reach any amicable settlement amongst them. But in utter breach of the Agreement the complainant has directly filed the present complaint without even making any effort to settle the matter amicably.
- v) The respondents have also pleaded that all the actions taken and demand raised by the respondent are in accordance with the Flat Buyers Agreement. The respondents have further denied the application of Rule 8 on them since the present agreement was executed between complainant and respondents, prior to the enactment of RERA Act and the promoter had already collected the amount in excess of 10 percent of the total price.

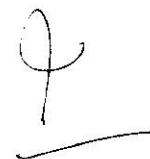


- vi) Further, the respondents have sought to defend themselves by stating that the complainant is guilty of concealing from the Authority, the goodwill gestures made by the respondents like offer of 'Loyalty Bonus' of Rs. 51,373 subject to payment of outstanding dues by the complainant. However, instead of clearing the outstanding dues, the complainant has filed the present complaint before this Authority.
- vii) The respondents further submitted that the floor is complete and they have already offered possession to the complainant on 14.06.2018.
- viii) The respondents have tried to explain the delay in offering possession by stating that the building plans were withheld by the Town & Country Planning Department (hereinafter referred to as DTCP), Haryana despite the fact that these building plans were well within the ambit of building norms and policies. It was due to the lack of clarity regarding the application of policy of self-certification to developers/colonizers, the respondents had to submit the building plans for approval again under the public notice dated 08.01.2014 issued by the Town & Country Planning Department which had granted 90 days to submit requests



for regularization of construction. Finally, the Department vide its order dated 08.07.2015, clarified that self-certification policy was also applicable to cases of approval of building plans submitted by the respondent. Thus, the delay in offering possession of the allotted flat to the complainant was due to inaction of the Government or its agencies and covered under force majeure clause 14 of the Agreement.

- ix) The respondents denied the allotment and the execution of FBA with the complainant and accused the complainant of distorting facts. It was further submitted by them that the respondents had in fact given the original allottee an option of allotment in Phase-II of the project or to apply for refund of his amount along with 9% interest on 09.07.2011. The original allottee consented to participate in the Phase-II allotment vide consent form dated 18.07.2011.
- x) As regards incidence of Value Added Tax and Goods & Service Tax the respondents have submitted that the complainant has agreed and accepted to bear the liability of incidence of taxes under clause 20.2 of the Agreement which states that "the purchaser shall undertake the obligation to make payment of all statutory dues, fresh incidence of taxes



or any enhancement of such taxes incidental to the floor allotted to him under the agreement”.

4. The Authority has considered the written and oral pleadings of both the parties in detail. It observes and orders as follows:-

- (i) First of all the respondents have challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. 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 in that complaint are fully applicable on the facts of this case as well.

The second challenge to the jurisdiction has been made on the ground that the plot area on which the floor to the complainant has been allotted measures 150.50 sq.mts which is less than 500 sq. mts., Therefore, this project was not required to be registered. For this reason also the jurisdiction of this Authority does not extends to this case.

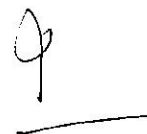
This objection is also not sustainable for the same reasons as given in complaint case No.144 - Sanju Jain Vs. TDI Infrastructure Ltd. Furthermore, the objection that the



plot/floor is less than 500 sq. mts. is totally devoid of merits because the plot measuring of 150.50 sq. mts. is a part of a large colony being developed by the respondents. This 150.50 sq. mts. plot is not an independent project. Large number of such plots along with other buildings are being developed by the respondents as a part of the larger project. It is overall project that has to be taken into consideration and not each individual plot in the colony for the purpose of determining jurisdiction of the Authority. For this reason also the challenge to the jurisdiction is not reasonable.

A third objection has been raised that as per the agreement the complainant was supposed to first refer the dispute to an arbitrator. This too is not acceptable because RERA Act provides comprehensive remedies to the home buyers in the projects launched before coming into force of RERA Act and also after its coming into force. Wherever there are subsisting obligations on the part of either of the parties, the Authority will have jurisdiction to deal with those matters to resolve it in a fair and just manner.

- (ii) The payments made by the complainant to the respondents have been fully admitted, therefore, there is no controversy



in that regard. As per flat buyer agreement the deemed date of possession of the apartment was 8.9.2014. Admittedly, the possession has been offered on 14.6.2018, thus there is a delay of nearly 3 years and 9 months in offering possession of the floor. Now since the possession has been offered, the prayer for refund of the money cannot be accepted, however, the complainant is entitled to compensation for delayed offer of possession.

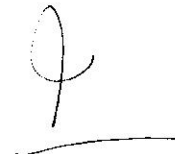
The Authority has laid down certain principles for compensating the allottees for delay in delivery of possession of the apartments to the allottees. Those principles are contained ***in complaint case No.113-Madhu Sareen Vs. BPTP Ltd.*** It is a split judgement with two members on one side and third on the other. The reasons logic for the judgement of the minority member are contained in ***complaint case No.49 of 2018- Parkash Chand Arohi vs. M/s Pivotal Infrastructure Pvt. Ltd.*** While in the instant case compensation to the complainant shall be paid in accordance with the judgement of the majority members, but the views of the minority member will remain applicable as they are.



- (iii) Last grievance of the complainant is that the respondents have sent an additional demand of Rs.5,18,703/- along with the offer of possession. This demand has been raised on account of EDC/IDC charges, preferential location charges, cost demarcation, club membership, electrification and STP charges, electricity connection charges, various taxes etc.

The Authority by way of a unanimous decision has dealt with each of the issues in the complaint case No.113 of 2018 - Madhu Sareen Vs. BPTP Ltd. The additional demand made by the respondents shall be re-calculated in accordance with the principles laid down in complaint case No.113. Learned counsels for complainant as well as respondents had conceded the point that the facts of this case are covered by the judgement of the Authority in complaint case No.113 - Madhu Sareen Vs. BPTP Ltd.

5. Accordingly, the matter stands disposed of with the directions that the respondent No.1 shall recalculate the amount payable by the complainant in accordance with the principles laid down in Complaint Case No. 113 of 2018; and he shall offer them a fresh offer of possession along with the revised statement of accounts within a period of 30 days. The complainant shall take action accordingly, if they feel



satisfied. However, if any grievance still survives, the complainant will be at liberty to approach this Authority again.

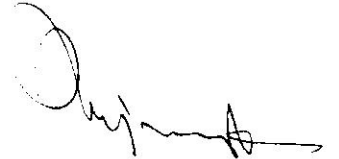
Disposed of. The orders be uploaded on the website of the Authority and file be consigned to the record room.



Dilbag Singh Sihag,
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman