

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

Complaint No. RERA-PKL-525 of 2018

Deepali Gupta.

...Complainant.

Versus

M/s Maxheights Township & Projects Pvt. Ltd.

...Respondent.

Date of hearing:- 06.12.2018.

Coram:- Shri Rajan Gupta, Chairman
Shri Anil Kumar Panwar, Member.

Appearance:- Shri Shailnder, Advocate for complainant.
Shubhanka, Advocate for respondent.

ORDER:-

The complainant booked a flat with the respondent in his project named "Maxheights Metroview Apartments" situated at Kundli, District Sonapat. As per the buyer's agreement entered between the parties on 01.12.2012, respondent was under an obligation to offer possession to the complainant by June, 2016. The complainant has already paid Rs. 30,73,353/- out of the total sale consideration of Rs. 37,41,125/- till 11.07.2014. The respondent thereafter has not demanded further payment and when the complainant visited the project site in December, 2016, she found that the construction work had been stopped



without completing the project. So, she contacted the respondent and he assured her that the possession would be delivered by May, 2017.

2. The complainant's grievance is that when the respondent has later offered her possession on 18.08.2018, she found that development work was still not complete in-as-much as internal and external roads were not laid; lifts were not installed and sanitary as also the electricity fittings were not in place etc. So, the complainant has filed the present complaint for refund of the amount along with interest and also for awarding her compensation.

3. The respondent has pleaded that the project could not be completed on time because the complainant and other allottees have committed defaults in payment of instalments. According to him, the project is now complete and occupation certificate for it has been applied on 16.06.2017. It was further stated that the concerned department had already carried out inspection of the site and the occupation certificate is likely to be granted in near future.

4. The Authority on perusal of record observes that the respondent in terms of Clause-18 of the agreement was entitled to cancel the allotment in case the complainant and other allottees had defaulted in payment of instalments. Significantly, the complainant had paid the last instalment on 11.07.2014 and there is nothing on record to indicate that the respondent thereafter has ever demanded money from the complainant or has informed the complainant that she had committed default for payment of some instalment. Also, there is no material on record to indicate that the respondent had initiated proceedings for



cancellation of allotment of the complainant's flat. How can then the respondent legitimately shift the blame to the complainant for non-completion of the project on time. Rather, it has to be necessarily held that the respondent himself was responsible for the delay which occurred in completion of the project and he is accordingly liable to compensate the complainant for the delayed period.

5. The complainant did not ask for refund on lapse of the deemed date of possession. He rather continued to wait for the completion of the project and has filed the present complaint seeking such relief only after the respondent had applied for grant of occupation certificate. The Authority is of the considered opinion that relief of refund cannot be allowed to the complainant after the respondent had infused the money received from the complainant in the project and had completed the same. The complainant's prayer for refund is, therefore, declined.


6. In the aforesaid facts and circumstances, the Authority deems it appropriate to dispose of the complainant with the following directions:

- a) The respondent shall offer the possession to the complainant within two months of the grant of occupation certificate after providing and laying all the basic facilities such as water, sewerage and electricity etc. besides installing sanitary and electricity fittings.
- b) The respondent shall recover the balance outstanding dues from the complainant only after adjusting the amount of compensation



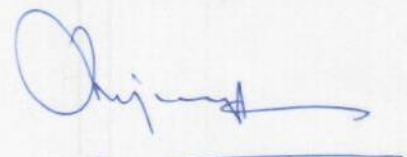
which he is liable to pay him for the delay period and such compensation shall be calculated in terms of the majority decision of this Authority in complaint case No. 113 of 2018 – titled as “**Madhu Sareen Vesus M/s BPTP Limited**” decided on 16.07.2018 i.e. at the rate prescribed under Rule 15 of the HRERA Rules, 2017. It is, however, made clear that in case the said decision of the Authority is modified in any manner by the Hon’ble Appellate Tribunal or some other competent court then the compensation amount would be adjusted by calculating it in terms of the decision so passed by the Hon’ble Appellate Court or the competent higher court.

7. Case is **disposed of** accordingly and file be consigned to the record room.


Anil Kumar Panwar
Member

Rajan Gupta
Chairman

I agree with the judgement authored by my learned friend Hon’ble Member of the Authority. I will, however, observe that for awarding compensation in lieu of the period of delay in offering possession the views expressed by me in Complaint case No.113 of 2018-Madhu Sareen Vs. BPTP Ltd. and subsequently in Complaint case No.49 of Parkash Chand Arohi Vs. Pivtotal Infrastructure Pvt. Ltd. will remain applicable.


(Rajan Gupta)
Chairman