



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 2994 OF 2019

Jai Vinder

....COMPLAINANTS(S)

VERSUS

BPTP Limited

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Anil Kumar Panwar**

**Chairman  
Member**

**Date of Hearing: 27.10.2020**

**Hearing: 2<sup>nd</sup>**

**Present: Shri Gaurav Gupta, Counsel for the Complainant.**

Shri Hemant Saini, Counsel for the Respondent.

### **ORDER: (RAJAN GUPTA-CHAIRMAN)**

1. Complainant's case is that he was allotted 3BHK apartment bearing no. Z24-10 – GF measuring 1203sq.ft. in the respondent's project Park elite

floors, Parkland Faridabad vide allotment letter dated 24 December 2009 for total sale consideration of Rs.22,37,000. The apartments buyer agreement was executed on 10th of June 2009 but a copy of the same has not been attached with the written complaint. Complainant has alleged that possession of the flat was to be given within 36 months from the date of execution of the agreement, i.e., up to 9th June 2012. Complainant, who has already paid an amount of Rs.9,08,581/- has not even got offer of possession by the respondent till date. It has been further alleged by him that the construction activities stand stopped at the site and the project is far from completion, therefore, the complainant is seeking refund of Rs.9,08,581 along with interest at 18% per annum. He is also seeking a relief of Rs.2 lakhs against mental harassment plus Rs.50,000 as litigation expenses.

The complainant further submits that the respondent had sent a letter dated 02.06.2015 stating that the unit has not been developed because of certain issues with the land owner. He was given an option to take refund or any other property in some other project of the respondent. The complainant had given his consent to take his money back. Thereafter several mails were written to the respondent but his refund has not been released by the respondent till now.



2. The respondent in his written reply has made the following submissions:

(i) That the Authority does not have the jurisdiction to adjudicate the complaint in view of judgement dated 02.05.2019 passed by the Ld. Appellate Authority in Sameer Mahawar vs MG Housing Pvt. Ltd.

(ii) Complaint is liable to be dismissed as the unit is an independent floor being constructed over a plot area measuring 140.30 sq. meters.

(iii) Timely payment is the essence of the agreement and the complainant failed to make the payment of demand raised on 23.05.2012 due to which several reminders were issued to him. The complainant has hugely defaulted in making timely payments and he has also contributed in the delay of the project.

(iv) The respondent has denied that the total sale consideration is Rs. 22,37,000/-.

(v) The respondent denies that the Apartment buyer agreement was executed on 10.06.2009. It is submitted that the Apartment Buyer Agreement was never executed as the complainant failed to return the agreement for its execution.

(vi) The timelines mentioned in the agreement are subject to force majeure and timely payment as per the agreed payment schedule.

(vii) The respondent had already offered the complainant an alternative unit. Respondent accepted that a letter dated 02.06.2015 was sent to the complainant informing that land litigation is going on over the plot which is allotted to the complainant. The complainant was given two options that is to opt for refund or get a ready to move in property in respondents project Park Floor-1 and Park Floor-2. He had to exercise his option within 30 days of such communication but he failed to revert to this letter within 30 days.

(viii) It is denied that there is no construction at the site or the project is far away from completion. It is submitted that the project of the respondent is completed.

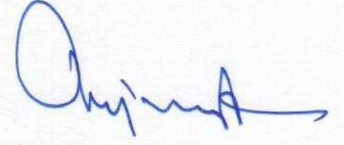
3. The Authority has examined the arguments of both sides. It was observed that complainant has so far paid about one third of the total sale consideration. Further, the respondent has admitted that in 2015 the project was not being developed on account of certain dispute with the land owners. Even though in written pleadings the respondent has stated that the project is completed but they have attached no proof of completion of the project. Even the apartment buyer agreement has not been properly executed. The respondent had given an option to the complainant in the year 2015 to take refund of the money paid or take another apartment in one of their other projects.

In the circumstances stated above, it is reasonable to expect that after a lapse of reasonable period of time, the respondent should have returned the money of the complainant after making appropriate deductions as per the letter of allotment. The fact however, remains that the respondents are using the money of the complainant since 2009 without any reason or justification. They have neither cancelled the allotment accompanied with refund of the balance money, nor have they offered him possession of the completed apartment, or allotted any other alternate unit.

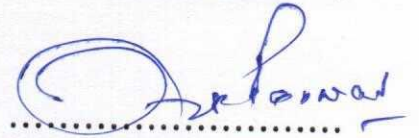
In nutshell, the respondents have withheld the money of the complainant without any justification whatsoever. In these circumstances, the Authority finds it fair & just to direct the respondent to refund the entire amount paid by the complainant along with reasonable interest which is SBI MCLR+2% as applicable on the date of passing this order. The interest on the principal amount works out to Rs. 9,15,833/- Accordingly, total amount refundable to the complainant works out to Rs 9,08,581 (principal) + Rs 9,15,833/-(interest) = Rs 18,24,414/-. The respondent is directed to refund the entire money to the complainant within 90 days of uploading the orders on the website of the Authority.

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4. Case is **disposed of** in the above terms. Files be consigned to the record room after uploading of the orders on the website.



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]

