

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

**Comp No. : RERA-PKL449/2018
Date : 08.01.2019
No. of Hearing: 2nd**

Anshul Goel

...Complainant

Versus

M/s BPTP Ltd.

...Respondent

CORAM :

Sh. Rajan Gupta
Sh. Dilbag Singh Sihag

Chairman
Member

APPEARANCE :

Pawan Kumar Adhana
Hemant Saini

Counsel for Complainant
Counsel for Respondent

Order:

1. The matter was earlier taken up on 27.11.2018 when the respondent filed his reply. The respondent has already incurred a cost of Rs. 56,000/- on account of non-filing of reply within prescribed time. Today the matter was heard and decided after going through oral as well as written pleadings of both the parties.



2. The case of the complainant is that he booked an independent floor No. PA-188-GF measuring area 1050 sq. ft., in the project named "Parkland Pride" of the respondent in district Faridabad. He paid Rs. 3,00,000/- as booking amount on 26.04.2011. He was issued an allotment letter dated 13.02.2012. In order to discharge his financial obligations the complainant availed a loan of Rs.20 lakhs from HDFC for which a tripartite Agreement was executed between the parties on 10.04.2013. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 09.04.2013. Payments were to be made under Construction linked payment plan. As per clause 5.1 of the Agreement delivery of the apartment was to be made within 30 months from the date of execution of FBA, with additional 180 days as grace period. Thus the deemed date of delivery was 08.04.2016.

The complainant had paid about Rs. 33.15 lakhs against the Basic Sale Price of Rs. 39,35,001/- till 21.08.2014 and Rs.39,01,877/- till date.

The grouse of the complainant is that despite several visits to the office, the respondent has failed to give any satisfactory information about the delivery of the unit and exact status of the project. Resultantly the complainant stopped making further payments and also objected to further demands raised by the respondent. The complainant has also



stated in his complaint that the respondent is wrongly showing the project as delivered on his website.

The main grievance of the complainant is that despite 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 13.11.2017 to respondent requesting him either to make time bound delivery of the floor or refund the entire amount deposited by him with 18% interest as delay compensation along with compensation on account of mental harassment etc. The complainant has not received reply to the legal notice from the respondents till date.

Now to seek redressal the complainant has filed the present complaint before this Authority seeking refund of Rs.39,01,877/- along with interest @ 18 % interest p.a. from due date of possession till the disposal of the complaint. He is also seeking an amount of Rs. 10,00,000/- as compensation for mental harassment etc. in addition to the cost of litigation.

The complainant during the proceedings supplied an advertisement in newspaper dated 12.10.2018 showing that the respondent is offering 3/4 BHK ready to move in floors in the project in



question to the general public but on the other hand the respondent has not yet offered the floor to the complainant which was booked in April,2011.

3. The respondent has denied all the allegations and raised several preliminary objections as follows:

- 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, 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 respondent has challenged the maintainability of this complaint on the ground that the unit is booked in name of the complainant and his wife but she has neither been made party to the complaint nor any authorization on her behalf to pursue the present complaint has been appended along with the complaint. Thus the complaint is defective and liable to be dismissed.
- 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 respondent has also pleaded that all the actions taken and demand raised by the respondent are in accordance with the Flat Buyers Agreement. The respondent has further



denied the applicability 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 respondent has sought to defend himself by stating that the complainant is guilty of concealing from the Authority the goodwill gestures made by the respondent like grant of 'Timely Payment discount" of Rs.1,56,442/- to the complainant.
- vii) The respondent has further made a statement that the floor will be complete and ready for delivery by 31.05.2019.
- viii) The respondent has 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 respondent 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 to the complainant is due to inaction of the Government or its agencies and covered under force majeure clause 14 of the Agreement.

- ix) The respondent further submitted that the complainant is also guilty of repeated defaults in making payment of installments despite repeated reminders dated 30.03.2017, 12.05.2017, 18.05.2017 etc. Since timely payment was the essence of the contract, the complaint is liable to be dismissed.
- x) The respondent has tried to explain the delay in offer of possession by stating that the contract with the main contractor M/s G. D. Buildtech was foreclosed on 17.09.2014, due to which the construction work suffered for some time but thereafter, a new agency, M/s Shiv Sai took over and



now the construction is in full swing and the respondent will be able to deliver the unit to the complainant by May,2019.

- xi) As regards incidence of Goods & Service Tax the respondents have submitted that the respondent are ready to adjust the amount at the time of offer of possession.
- xii) The respondent has also submitted that the project is almost developed and is well equipped with best, state of art facilities.

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 respondent has 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.
- ii. The second challenge to the jurisdiction has been made on the ground that the floor area on which the floor to the complainant allotted measures less than 500 sq. mts. Thus,



this project was not required to be registered therefore, the jurisdiction of this Authority does not extend to this case. This objection is also not sustainable for the same reasoning given in complaint case No.144 - Sanju Jain vs TDI Infrastructure Ltd. Furthermore, the issue that the plot/floor is less than 500 sq. mts. is totally devoid of merits because this plot/floor is a part of larger colony being developed by the respondent. The said plot/floor is not an independent project being developed by the respondent. Numerous such plots along with other buildings are being developed by the respondents as a part of this licence. For this reason also the challenge to the jurisdiction is not acceptable.

- iii. The third objection has been raised that as per the agreement the complainant was supposed to first refer to the matter to the 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 after coming into force of Act. Wherever substantive obligations on the part of either of the parties, still subsists the Authority will have jurisdiction



to deal with those matters to resolve them in a fair and just manner.

5. Written pleadings as well as oral submissions of both the parties have been examined. Admittedly, the floor-buyer agreement between the parties was executed on 09.04.2013. As per clause 5.1 of the Agreement, the delivery was to be made within 30 months from the date of execution of FBA, with additional 180 days as grace period. So there is no controversy in that regard that as per floor buyer agreement the deemed date of possession of the unit was 08.04.2016. The payments made by the complainant to the respondent are fully admitted. The respondent further stated that the possession of the unit will be delivered by May, 2019.

If the respondent delivers the apartment by May, 2019, it will be with delay of about 3 years from the deemed date of handing over the possession. In the circumstances when the project is being completed and the possession is likely to be offered, even though with delay, it does not justify refund of the money paid by the complainant. Complainant has chosen to be a part of this under construction project and some delay in such projects is not unexpected, for which the complainant can be compensated.



This Authority has disposed of a bunch of petitions with the lead case **Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd.** There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd.** It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

6. Accordingly the respondent is directed to issue a fresh statement of accounts to the complainant after recalculating the amounts payable by the complainant. Further, the compensation payable to the complainant on account of delayed delivery of possession shall also be shown in the statement of accounts and the net payable /receivable shall be clearly written after accounting for the same. The statement shall be issued by the respondent within a period of 45 days and he shall also periodically apprise the complainant of the stage of construction of the project.

6. Since the project in question with respect to the present complaint has not been registered as required under section 3 of the RERA

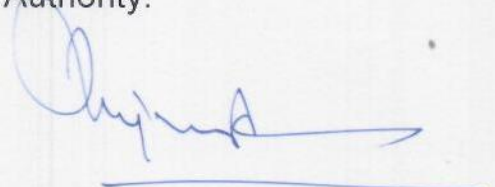


Act,2016. Therefore, the Authority directs the office to issue a show cause notice to the respondent under section 59(1) of the RERA Act, 2016 for non-registration of the project under section 3 of the Act above.

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



Dilbag Singh Sihag.
Member



Rajan Gupta
Chairman