



Complaint no. 937 of  
2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 937 OF 2019

Vikas Bhutani

....COMPLAINANT(S)

VERSUS

M/s B.P.T.P Ltd

....RESPONDENT(S)

**CORAM: Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 09.02.2021**

**Hearing-14<sup>TH</sup>**

**Present : - Mr. Vikas Bhutani , Complainant in person**

Mr. Himanshu Monga, Learned Counsel for the respondent

**ORDER (DILBAG SINGH SIHAG-MEMBER)**

While examining the file record, it is observed that complainant was allotted unit no. 81 AVE-38 as per builder buyer agreement executed between the parties on 04.01.2011, measuring 2104 sq ft on the second floor of respondent's project Park-81, situated at Faridabad. However, respondent could not offer the same on account of various lapse on his part. Consequently, he has offered alternative flat to the complainant. In compliance of directions of the Authority, complainant was supplied a list of three available flats to choose a flat of his choice. So, complainant has chosen an alternative unit bearing no. PA-128, 1<sup>st</sup> floor having area 1803 sq ft situated in project-Parkland Pride, sector-77, Faridabad.

2. On the last date of hearing, case was adjourned on the request of Ld. counsel of the respondent Mr. Hemant Saini in order to finalise a mutual settlement. But, today complainant made a categorical statement that no settlement took place in respect of price of the alternative unit. He is ready to accept the alternative unit provided the same is given at the original rate of basic sale price. Accordingly, he filed his calculation sheet whereby he has calculated the price of the alternative unit at the original basic rate agreed between the parties

@ rate of Rs 2365.89 per sq ft when allotment of original unit was made for basic sale price of Rs 42,65,717. He has further made a submission that an amount of Rs 2,71,127/- paid on account of preferential location charges for original apartment be also refunded/adjusted as alternative unit no. PA-128 is not park facing. He also pleaded that he has already paid transfer fee of Rs 4,68,000/- at the time of purchasing of unit from original allottee so said amount should be not charged again by the promoter-respondent.

3. Today, Ld. counsel for the respondent still insists upon granting one more opportunity to finalise the settlement.

4. On perusal of record, it has been observed that 3-4 opportunities have already been granted to the respondent for out of court settlement but the matter could not be resolved out of court and therefore the case has been taken up to adjudicate on merits.

5. It is a principle of natural justice and equity that if any unit has been allotted at a given price by respondent to complainant and respondent is not in a position to offer same booked unit, then he cannot charge any higher rate than the one mentioned in the agreement executed between the parties without getting the consent of allottee. In this case, it is the promoter who is not in a position to offer booked unit on account of various lapses on his part. Complainant is nowhere at fault and he has given a consent to accept alternative unit by forfeiting his legal

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right to ask for refund of paid amount with delay interest as well as compensation as per various provisions of RERA Act, 2016 especially under section 18 (1) of Act. Therefore, Authority is of considered view that respondent being at fault should not be allowed to charge higher price than original price in case of alternative units offered by him to settle the dispute. In case there is difference of area of the dwelling unit and alternative unit is at different story than the original allotment, the allottee can legitimately claim that a fair price per changed circumstances be charged from him for the alternative unit. So,, if the floor of original allotment was different than the floor on which alternative unit has been allotted, the respondent shall be permitted to charge the rate at which original allotment to a homebuyer of the floor of alternative unit was made. The amount so calculated can be higher or even on lower side. In case such amount is less than the original amount charged from the complainant, the respondent shall adjust the excess amount towards the dues recoverable from complainant and if no dues are thereupon further payable by the complainant, the respondent shall refund the excess amount to the complainant along with interest @9% per annum. In case the amount so calculated for the alternative unit is more than the original amount charged from the complainant, the complainant then shall be liable to pay the difference amount to the respondent.

6. It is an admitted fact that the alternative unit is not a preferentially located unit therefore, there is no justification for the additional cost of PLC against this

unit. Respondent is directed to revise price of unit accordingly by adjusting PLC cost if any already paid by complainant-allottee.

7. As far as additional transfer fee levied by the respondent is concerned the same has been declined by the Authority considering principles of natural justice and rational logic. Since complainant had been charged for transfer fee at the time of approval of respondent to get transferred this unit from original allottee to complainant-allottee and it is an admitted fact that at that time transfer fee had already been charged to the tune of Rs 4,68,000/-. Therefore, there is no justification once again to allow the respondent to charge and that too on account of various lapse on his own level. Therefore, Authority quash this transfer fee charges and direct the respondent to allot alternative unit.

8. In nutshell respondent is directed that after considering above directions of Authority he shall issue fresh statement of accounts to complainant and offer possession of alternative unit within 45 days of uploading of this order. Respondent is further directed that he shall also calculate delay interest to be accrued on the paid amount from deemed date of possession to actual date of possession of alternative unit and as per provisions of Rule 15 of HRERA Rules, 2017 as decided in complaint no. 113/2018-Madhu Sareen vs BPTP Pvt Ltd.

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9. With these directions, the complaints is **Disposed of.** File be consigned to record room.



**ANIL KUMAR PANWAR**  
**[MEMBER]**



**DILBAG SINGH SIHAG**  
**[MEMBER]**

