

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

Comp No:

RERA-PKL 103/2018

Devinder Singh

...Complainant

Versus

M/s BPTP Ltd

...Respondents

& M/s Countrywide Promoters Pvt. Ltd.

Date: 15.01.2019

No. of Hearing : 6th

CORAM :

Sh. Rajan Gupta

Sh. Anil Kumar Panwar

Sh. Dilbag Singh Sihag

Chairman

Member

Member

APPEARANCE :

Aditya Verma

Hemant Saini

Counsel for Complainant

Counsel for Respondents

Order:

1. This matter was adjourned on five occasions for amicable settlement but the same could not fructify. The complainant declined the alternative offers made by the respondents since either they were on higher floors or in the projects located at considerable distance from the project in which



the complainant had invested money. Today the matter was heard and decided after going through oral as well as written pleadings of both the parties.

The case of the complainant is that he booked a flat No. D-102 measuring 1107 sq. ft. in the project named "Park Arena" Parkland of the respondent in district Faridabad. He paid Rs.2,56,438/- as booking amount on 07.09.2010. He had paid about Rs.9.5 lakhs till 31.12.2010.

Flat Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 26.07.2011. Payments were to be made under Construction linked payment plan. As per clause 3.1 of the FBA, delivery of the apartment was to be made within 36 months from the date of booking of the flat, with additional 180 days as grace period. Thus the deemed date of delivery was 07.03.2014. 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.

The complainant had paid about Rs.31,50,259/- against the total consideration of Rs.32,10,210/- till July,2012.

The grouse of the complainant is that despite several visits to the office, the respondents failed to give any satisfactory information about



the delivery of the unit and the office staff of the respondents on one such visit by the complainant told him that the present project was abandoned and he will be relocated in some other project.

The main grievance of the complainant is that despite payment of more than 95% 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 letter dated 26.07.2011 to respondents for refund the entire amount deposited by him with 18% interest as delay compensation along with compensation on account of mental harassment etc. but the respondents neither replied to his letter nor accepted his request for refund. The complainant on his visit to office of respondents on 06.10.2017 was offered an alternative flat by their representative. The complainant stated that the efforts for amicable settlement made by the respondents before filing of the present complaint were not sincere.

Now to seek redressal the complainant has filed the present complaint before this Authority seeking refund of Rs.31,50,259/- along with interest @ 18 % interest p.a. from due date of possession till the disposal of the complaint. He is also seeking the cost of litigation.

3. The respondents have 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 FBA 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) The respondents also state that all the actions taken and demand raised by them are in accordance with the FBA. 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.
- iii) The respondents have also challenged the maintainability of this 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.
- iv) The respondents state that in the present case HUDA is a necessary party, since HUDA had acquired entire sector 80,



Faridabad including the land on which the present project was to be developed for construction of 24 mts. wide circulation road as well as sector roads as per Master Plan. HUDA has failed to develop the same which slowed down the development of the whole area/sector. Further, development of the project was adversely affected and limited only through the village link road. Even the respondents suffered huge financial losses due to lackadaisical approach of HUDA as only 99 units survived out of 650 units and about 350 bookings had to be relocated. Thus the delay in the delivery of possession of the flat is due to inaction of the Government.

- v) The respondents state that they intend to complete 2 towers as a part of Phase -I. Further, they have admitted their liability to pay penalty for delay compensation to the complainant as per FBA.

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.

- ii. The second 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 FBA between the parties was executed on 26.07.2011. As per clause 3.1 of the FBA the delivery was to be made within 36 months from the date of booking, with additional 180 days as grace period. So there is no controversy in that regard that as per FBA the deemed date of possession of the unit was 07.03.2014. The respondents have admitted the delay in delivery of possession of the flat. Even the efforts for amicable settlements have failed since the alternative offers made by the respondents were either on higher floor or



in the projects located at considerable distance from the project in which the complainant had invested money. Payment of about Rs. 31,50,259/- has been admitted by the respondents. There is a delay of about 4 years and the project is still incomplete. The respondents have not even offered possession of the flat to the complainant till date, thus it seems highly improbable that the possession of the flat will be delivered in near future. In these circumstances, after a lapse of more than 8 years of booking of the flat, the complainant cannot be expected to wait further for an indefinite period of time for delivery of possession of his flat.

Therefore, the Authority finds it to be a fit case for refund and directs the respondents to refund Rs. 31,50,259/- already paid by the complainant along with interest at the rate stipulated under Rule 15 of the HRERA Rules, 2017.

6. Respondents shall pay the entire amount within 60 days in two instalments of which first instalment will be payable within 30 days and the next within 30 days thereafter. The period of paying such instalments will start from the day the order is uploaded on the website of the Authority.

7. 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 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



Anil Kumar Panwar
Member



Rajan Gupta
Chairman