# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**BEFORE THE ADJUDICATING OFFICER**

**Complaint No. -764 of 2018**

**Date of Institution: -17.10.2018**

**Date of Decision: - 27.07.2021**

Surendra Yadav s/o Sh. Ram Nayan Yadav r/o 24/17 , Block-B , ground floor , BPTP Park Elite Floor, Sector-88, Faridabad-121003.

....COMPLAINANT

VERSUS

M/s B.P.T.P. Ltd, through Director/Authorized representative, M-11, Middle Circle, Connaught Circus, New Delhi-110001

....RESPONDENT

**Hearing**:- 29th

**Present:** Mr. Surendra Yadav, Complainant through VC
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for respondent

**ORDER:-**

The brief facts culminating into the institution of present complaint are:-

2. Complainant had booked a flat E-80-FF having area of 1186 sq ft under the construction linked plan in the respondent's project 'Park Elite Floors' situated in Faridabad in year 2015. Builder buyer agreement was executed between the parties on 24.06.2015 and in terms of it, possession of unit was

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supposed to be delivered up to 24.12.2018. An amount of ₹ 14,00,763/- has already been paid (last payment was made on 23.01.2016) against the basic sale price of ₹ 41,68,724/- . It has been alleged by the complainant that carpet area committed in the builder buyer agreement as 1082 sq ft was drastically reduced to 902 sq ft without consent of allotee. An offer of possession dated 22.05.2018 was sent by the respondent without receiving occupation certificate. Said unit was purchased by the complainant by availing loan from the bank.

3. Feeling aggrieved, present complaint has been filed by the complainant seeking quashing of offer of possession letter dated 22.05.2018 as it was not supported with Occupation Certificate, to set aside the illegal charges of sewage treatment plant, to issue directions to respondent to adjust the reduced carpet area in the final demand notice, to issue directions to respondent to complete the project with all infrastructure as provided in the layout plan, to issue directions to respondent to provide the quality construction, material, fittings and fixtures as per the plan, to direct the respondent to pay sum of ₹ 5,00,000/- to complainant as compensation for unfair trade practices, to direct the respondent to pay sum of ₹ 10,00,000/- to complainant as compensation for illegal demands, reduced carpet area, threats, depression, mental harassment and anxiety, to direct the respondent to pay sum of ₹ 1,00,000/- as reimbursement of legal expenses and other miscellaneous expenses.

4. Respondent had appeared and filed his reply wherein it has been submitted that unit number E-80-FF was allotted to complainant vide allotment letter dated



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09.06.2015. Construction updates were duly communicated to complainant vide email dated 18.08.2017, 09.12.2017, 25.03.2018, 10.04.2018, 10.05.2018, and 16.06.2018 as complainant has bought this unit under possession linked plan. There after possession of unit after completing its construction was offered to complainant vide letter dated 22.05.2018 but it is the complainant who has not come forward to take possession of unit after paying due amount. There is no delay on part of respondent as possession was offered within timeline stipulated in builder buyer agreement. Regarding issue of decrease in area, it has been stated that unit was sold on basis of super built up area and not carpet area and fact is that area remains the same i.e. 1186 square feet which is the original allotted area as per the builder buyer agreement. Moreover, Occupation Certificate for the said unit was received on 07.09.2018 i.e just after 4 months of offer of possession. Regarding substandard of construction material, it has been submitted that the allegations of complainant are baseless because material used by the respondent are as per ISO standard. The respondent has prayed for dismissal of the complaint.

5. Record reveals that the present complaint has been filed by the complainant on 17.10.2018 seeking quashing of offer of possession letter dated 22.05.2018 as it was not supported with Occupation Certificate, to set aside the illegal charges of STP, to issue direction to respondent to adjust the reduced carpet area in the final demand notice, to issue direction to respondent to complete the project with all infrastructure as provided in the layout plan, to issue direction to respondent to provide the quality construction, material, fittings and fixtures as per the plan,



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to direct the respondent to pay sum of ₹ 5,00,000/- to complainant as compensation for unfair trade practices, to direct the respondent to pay sum of ₹ 10,00,000/- to complainant as compensation for illegal demands, reduced carpet area, threats, depression, mental harassment and anxiety, to direct the respondent to pay sum of ₹ 1,00,000/- as reimbursement of legal expenses. Vide order dated 15.02.2019 passed by the then Adjudicating Officer, complainant was advised to institute a complaint for the relief of possession before the Haryana Real Estate Regulatory Authority as jurisdiction of Adjudicating Officer is restricted only for adjudging compensation. Accordingly, complainant had instituted a Complaint no. 880 of 2019 titled as Surendra Yadav versus BPTP Pvt Ltd before Haryana Real Estate Regulatory Authority Panchkula on 29.03.2019 for relief of possession, delay interest, to revise the final demand in accordance with changed layout plan and decrease in carpet area, to direct the respondent to remove electrification and sewage treatment plant charges, to revise meter connection charges, to direct the respondent to withdraw maintenance invoice , to impose penalty upon respondent as per provision of section 60 of RERA Act,2016, to issue direction to respondent to pay compensation to the complainant for mental agony, pain and harassment. Now present complaint is limited to compensation only.

6. Perusal of file shows that the complainant had booked flat no. E-80-FF having area of 1186 sq ft in the respondent's project 'Park Elite Floors' Faridabad under construction linked plan in year 2015. Builder buyer agreement was executed on



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24.06.2015. As per terms of the said agreement, possession of the unit was to be handed over to complainant upto 24.12.2018. Basic sale price was ₹ 41,68,724/- . Against the said basic sale price, amount of ₹14,00,763/- was paid by the complainant to the respondent. It is the allegation of the complainant that invalid offer of possession was made by the respondent on 22.05.2018, but by that time Occupation Certificate was not received by the respondent.

7. On the other hand, it is the argument of learned counsel for respondent that occupation certificate was received by developer on 07.09.2018, copy of which has been placed on record as Ex. CW-1/K. The complainant has prayed for compensation of ₹ 5,00,000/- for unfair trade practice, ₹ 10,00,000/- for mental harassment and anxiety, ₹ 1,00,000/- as legal expenses.

8. Under the head of unfair trade practice the complainant has sought ₹ 5,00,000/- as compensation, the complainant has not stated even a single word in his complaint as to what unfair trade practice has been committed by the respondent for which complainant is to be compensated. In the absence of any such specific pleading and argument or evidence, it cannot be said that any unfair trade practice has been committed by the respondent for which complainant is liable to be compensated.

9. Second head for compensation is taken as mental harassment and anxiety. Though it has been argued by learned counsel for complainant that complainant is entitled to ₹ 10,00,000/- as compensation because of mental harassment and sufferings given by the respondent. At this stage, it is worthwhile to point it out



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here that as per builder buyer agreement, possession of unit was to be delivered on 24.12.2018. Offer of possession has been made by the respondent on 22.05.2018. Though it is the argument of learned counsel for complainant that offer of possession was not accompanied with occupation certificate, yet the copy of occupation certificate has been placed on record showing that it was received by the respondent on 07.09.2018. It is also within the stipulated time period, for handing over of possession to complainant-allottee. The offer of possession by respondent was around six months prior to the date fixed for handing over of possession and occupation certificate was received three months prior to date fixed for handing over of possession. If handing over of possession of the unit to the complainant-allotee would have been delayed, the complainant could be said to be entitled to compensation under the head mental harassment and anxiety. If the possession has been offered much prior in time, it cannot be said that complainant has suffered any mental harassment or agony or anxiety. In the absence of any such proof, he cannot be said to be entitled to any compensation on account of mental harassment. agony and anxiety.

10. Next head taken by the complainant claiming compensation is legal expenses. At the time of filing of complaint in the prayer clause he has sought reimbursement of legal expenses to the extent of ₹ 1,00,000/-. The complainant by way of affidavit placed on record has stated in para no. 59 that he would incur ₹ 50,000/- as litigation cost, traveling and miscellaneous cost. In the foregoing paragraphs compensation under other heads has been declined to the complainant



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on the ground that the respondent has offered possession of unit to the complainant prior to the date fixed in Builder buyer agreement. The complainant could be said to be entitled to legal expenses only when he would have been granted compensation on any ground either unfair trade practice or mental harassment and agony. If the possession of the unit has been offered to complainant prior to the time fixed between the parties by virtue of builder buyer agreement and he is not held entitled to compensation on account of unfair trade practice or mental harassment, he cannot be said to be entitled for reimbursement of legal expenses.

11. Hence, it is hereby observed that the complainant is not entitled to compensation under any head claimed by him or reimbursement of legal expenses.

12. Finding no merit, the present complaint is ordered to be dismissed. Order be uploaded on the website of the Authority and file be consigned to record room.



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**Dr. Sarita Gupta**
**[Adjudicating Officer]**

27.07.2021

Note: This order contains 7 pages. All the pages have been checked and signed by me.

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**Dr. Sarita Gupta**
**[Adjudicating Officer]**