



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1.COMPLAINT NO. 744 OF 2019

Swati JainCOMPLAINANT(S)

VERSUS

M/s BPTP Pvt LtdRESPONDENT(S)

Hearing-14th

2 .COMPLAINT NO. 1771 OF 2019

Sanjay PanchalCOMPLAINANT(S)

VERSUS

M/s BPTP Pvt LtdRESPONDENT(S)

Hearing-14th

3. COMPLAINT NO. 156 OF 2019

Awnindra Dutt TiwaryCOMPLAINANT(S)

VERSUS

M/s B.P.T.P LtdRESPONDENT(S)

Hearing-12th

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CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Date of Hearing: 27.07.2021

Present: - Mr. Nitin Kant Setia, Counsel for the Complainants in all complaints (through video conferencing)
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Captioned complaints are taken up together as grievances involved are similar and are directed against the same project-Park Elite Premium of the respondent. This order is passed taking complaint no. 1771/2019 titled Sanjay Panchal vs BPTP Pvt Ltd treated as lead case.
2. This complaint was heard at length on 04.08.2020 when after hearing the parties, Authority had prima facie observed that after execution of conveyance deed by way of mutual settlement arrived at between the parties , obligations of the respondent stood discharged. However, an opportunity was given to the complainants to put forth his arguments. Said order is reproduced here for ready reference:



“ The captioned matters involve similar issues and relief and are of the same project of the respondent. Complaint no. 744 of 2019 titled as Swati Jain vs BPTP Ltd. is taken as lead case.

2. The complainant's case is that he is a subsequent allottee in the project. He had purchased the flat from Mr. Amit Kumar. The flat buyer agreement was entered on 07.01.2011 for the unit bearing no. H-904 admeasuring super area of 1128 sq. ft. The basic sales price of the unit was Rs. 22.80 lacs. The deemed date of offer of possession was 07.07.2014.

Respondent got the occupation certificate on 27.02.2018 and offered possession vide letter dated 14.03.2018 along with an unjustified additional demand of Rs. 15,71,415/-. The demand includes Rs. 8,21,004/- on account of cost escalation. The complainant submits that entire payment was made in 2012 and the delay has taken place due to the fault of the respondent therefore he cannot charge any amount on account of cost escalation from the complainant. Respondent has charged cost escalation @ 300/- per sq ft on 1128 sq. ft. area whereas as per the calculation in accordance of the CIDC index it comes to Rs. 8.16 per sq. ft. Also, Rs. 50,000/- are being charged on account of club membership but there is no club present at site.

Further, the super area of the flat has been increased from 1128 sq. ft to 1232 sq. ft by the respondent arbitrarily. The super area mentioned in the flat buyer agreement is 1128 sq. ft. whereas in the letter of offer of possession dated 14.03.2018 it is 1232 sq. ft. Respondent has taken the area as 1232 sq. ft while raising demands but while calculating the delay compensation the area has been taken to be 1128 sq. ft.

3. The complaint was in immediate need of a house and therefore he made all the payments and possession was handed over to him. The conveyance deed was executed on 25.09.2018.

He is now praying for quashing impugned demand notice dated 14.03.2018 and setting aside the EEDC charges, Cost escalation, club membership charges, GST and for recalculating delay penalty @ 18 % p.a along with action under section 59 of RERA and compensation of Rs. 5,00,000/- on account of Mental agony.

4. Notice was issued to the respondent on 13.03.2019 and was successfully delivered on 15.03.2019. Respondent filed his reply in fifth hearing of the matter in complaint no. 1771 of 2019 and in sixth hearing in complaint no. 744 of 2019.

5. *The respondent in his written submissions denies the allegations of the complainant and submits that the original allottee had entered into a settlement deed and he has already paid the settlement amount i.e Rs. 7,82,140/- vide cheque bearing no. 477048 dated 21.04.2018 as full and final payment. Thereafter, the complainant purchased the said flat from the original allottee and a nomination letter dated 16.05.2018 was issued in her favor by the respondent. She took the physical possession of the unit on 03.09.2018 and conveyance deed was executed in her favor on 25.09.2018.*

Respondent further submits that as the conveyance deed already stands executed in favor of the complainant, the transaction between the parties stands concluded. The ownership was duly transferred to the complainant and she specifically agreed and accepted that the transaction stands final and she shall not raise any issues qua any charge etc. as per recital K of the conveyance deed. The respondent stands discharged from all the obligations towards the complainant after execution of the conveyance deed and hence the present complaint is not maintainable before the Authority.

6. *Today, none appeared on behalf of the complainant. Learned counsel for the respondent has appeared but he too has sought adjournment on the ground that he is not getting adequate assistance from respondent for the reason that officials dealing with these cases have been tested positive for COVID-19 and are therefore not attending the office.*

7. *The Authority tentatively observes that it has been encouraging the parties to the complaints to settle their disputes outside the court. In this case an outside court settlement took place between the respondent and the original allottee. The original allottee made full and final payment as per the settlement deed on 21.4.2018. The present complainant purchased the apartment from the original allottee after the settlement i.e. in May,2018. A conveyance deed has also been executed in favour of the complainant.*

In view of this Authority after the execution of the conveyance deed and on account of the mutual settlement, the obligations of the respondent stand discharged. Now the complainant cannot go back and start claiming quashing of the demand notice dated 14.3.2018 and also demand compensation on account of mental agony etc. Such relief could be claimed only before the conclusion of the agreement between the parties.



However, before arriving at a final conclusion in this regard the Authority would hear both the parties.

8. *Case is adjourned to 17.09.2020 with a direction that parties shall physically argue the case on next date of hearing or in alternate may opt to file written arguments if they have some difficulty in attending the court. In case the parties fail to argue the case by putting personal attendance or by filing the written arguments, the Authority will be constrained to dispose of the case on merits on the basis of the material already placed on record."*

3. Today, learned counsel for the complainant cited judgment dated 24.08.2020 of Hon'ble Supreme Court passed in Civil Appeal no. 6239 of 2019 titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Pvt. Ltd. wherein Hon'ble Supreme Court had ruled that it would be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation.

4. Learned counsel for the complainant argued that in light of judgment rendered by Hon'ble Supreme Court in Civil Appeal no. 6239 of 2019 titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Pvt. Ltd., respondent should be directed to pay to the complainant interest



for the period of delay in handing over the possession. He further argued that offer of possession dated 14.03.2018 sent by respondent deserves to be quashed as it was accompanied with various illegal demands and he should be directed to refund all the excess charges collected by him.

5. On the other hand, learned counsel for the respondent argued that offer of possession after receiving occupation certificate dated 27.02.2018 was made to complainant on 14.03.2018 alongwith demand of Rs 13,89,420/-. On account of mutual settlement/negotiation arrived at between the parties the complainant had agreed to pay amount of Rs 7,82,612/- as full and final settlement of all issues. After making payment in terms of said settlement the complainant took the possession of unit in May 2018 and thereafter got conveyance deed executed in his favour on 27.11.2018. Now complainant has no locus standi to file this complaint for the reason that after mutual settlement of matter, taking over of possession and execution of conveyance deed, respective obligations of both the parties stood duly discharged. Therefore, he prays for dismissal of the complaint.

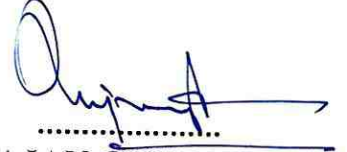


Further, it has been contended by respondent that judgment dated 24.08.2020 cited by learned counsel for the complainant is distinguishable from the facts and circumstances of the present complaint. In said judgment coercion was established on the part of developer for getting the complainants execute the conveyance deeds. Further, the complainant has already taken possession of unit in April-May 2018 and has filed present complaint on 26.07.2019 i.e. approximately 1 year after conclusion of the contract.

6. After hearing contentions of both the parties and after going through documents placed on record, it is observed that the complainant had taken possession of the unit allotted to him in May 2018 and also got conveyance deed executed in his favour on 27.11.2018. Further , he has paid an amount of Rs 7,82,612/- against total demand raised against him of Rs 13,89,420/-by way of mutual settlement. Now at this stage he cannot be allowed to open a concluded contract. At this stage complainant cannot go back in time and claim quashing of demand notice dated 14.03.2018. As of today, contractual obligations between the parties stands discharged. Accordingly, the disputes arising between them in respect to relief of delay interest and quashing of offer of possession alongwith

refund of excess amount cannot be entertained by this Authority. Hence, these complaints are dismissed.

7. **Disposed of.** Files be consigned to record room and order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]

