



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

### BEFORE THE ADJUDICATING OFFICER

**Complaint No. -2199 of 2019**

**Date of Institution: -03.09.2019**

**Date of Decision: - 27.07.2021**

Mr. Bhupesh Devgun & Mrs. Ritu Devgun r/o 1888/17 Govind Puri Extn  
Kalkaji New Delhi-110019

....COMPLAINANT

VERSUS

M/s BPTP Ltd having registered office at M-11, Middle Circle, Cannaught Place,  
New Delhi-110001

....RESPONDENT

**Hearing:- 16<sup>th</sup>**

**Present:-** Sh. Satish Mishra Advocate, Counsel for the complainant through VC.

Mr. Hemant Saini Advocate and Mr. Himanshu Monga Advocate,  
Counsel for the respondent.

*Satish Mishra* *Hemant Saini*

**ORDER:-**

Brief facts of the complainant's case are that:

Bhupesh Devgun and Ritu Devgun, the complainants had booked office space no. 107 on first floor having super area of 616 sq ft situated in respondent's project-BPTP Park Central, Sector 85, Faridabad on payment of ₹ 3,07,725/-. Complainants continued to pay the amounts as and when demanded by the respondent. The complainants requested the respondent for signing the builder buyer agreement on every payment. Builder buyer agreement was finally executed between the complainants and respondent-developer on 28.12.2012. The complainants had paid amount of ₹ 27,59,980/- to the respondent till August 2013 against the basic sale price of ₹ 4150/- per sq. ft. The possession was to be delivered in July 2016. The respondent had collected 95 % of the amount even before starting the construction but failed to offer the possession. On 01.06.2016, the respondent sent an email regarding delay in offer of possession and informed the complainants that possession will be offered in June 2018 and offered the complainants compensation for delay as per agreement. On 06.07.2016, again an email was received by the complainants regarding re-allotment of cheaper units at much higher prices situated at far-off places. The complainants refused the said offer of re allotment. Another e-mail dated 12.07.2016 was sent by the respondent stating that possession would not be possible before June 2018 and adequate compensation as per agreement will be given. On 17.05.2018 again an email was

received wherein respondent had accepted delay on its part and requested complainants to consent for re-allotment. The complainants have attached copies of photographs of construction and have stated that even in June 2018 as well, the project was nowhere near completion and it was to take another two three years more as per status in June 2018 to complete the construction. The respondent has till date not offered any penalty and interest to the complainants. Respondent has collected enhanced EDC despite the fact that there was stay order from Hon'ble High Court in CWP No. 5835 of 2013 titled as Balwan Singh and others versus State of Haryana and others. The respondent has not deposited amount of enhanced EDC with Department of Town and Country Planning, Haryana which is illegal. Complainants had filed a complaint bearing no. 380 of 2018 with The Haryana Real Estate Regulatory Authority, Panchkula which was withdrawn on 06.02.2019 in lieu of settlement arrived at between the parties on 04.02.2019. As per settlement deed, an alternate unit E-40-36-SF having super area of 1047 square ft situated in Park Elite Floors, Faridabad was allotted. The possession of the same was to be delivered within 7 months i.e., up to 04.08.2019 with Occupation certificate/Completion certificate. The respondent has not offered any possession till date nor has got Occupation certificate/Completion certificate for the said unit.

2. Feeling aggrieved present complaint has been filed by the complainants. By way of the present complaint, the complainants have sought refund of ₹

27,59,980/- along with interest @ 18 % p.a., compensation of ₹ 10,00,000/- for delay for more than 8 years, ₹ 5,00,000/- on account of mental harassment, ₹ 1,00,000/- as litigation cost and ₹ 5,00,000/- on account of loss of opportunity. Further, it has been prayed that respondent be penalized for collecting enhanced EDC despite stay order by Hon'ble High Court and not depositing it with Department of Town and Country Planning, Haryana.

3. Respondent had appeared and filed reply taking preliminary objections that vide settlement deed, the complainants had agreed and undertaken that with regard to new unit i.e. E-40-36-SF in Park Elite floors, they will not challenge the same in future at any point of time. The complainants had approached various authorities namely Chief Administrator HUDA, DTP Faridabad and DTP Enforcement and had also filed Complaint no. 380 of 2018 before Hon'ble Authority, which was later on withdrawn on amicable settlement and did not seek liberty to institute fresh complaint. The complainants had made several defaults in making timely payments of various instalments. At the time of execution of settlement deed, special credit of ₹ 14,86,138/- was given to the complainants which has been concealed by them, the construction of Park Elite floors was going on in full swing but due to outbreak of Covid-19, the construction work was halted, to ensure the completion of project and not to disturb the cash flow, the buyer be encouraged to take possession rather than refund, so far as enhanced EDC is concerned, the complainants have misled Hon'ble Court. On the issue of

EEDC, respondent submits that it had raised demand of EEDC on 28.06.2012 against which the complainants had made the payments voluntarily on 12.07.2012 and 16.07.2012. Hon'ble High Court had stayed the operation of Haryana Urban Development Authority memo no. HUDA-CCF-Actt-I-2011/24224 dated 14.07.2011 in the year 2013. Since there was an ambiguity, DTCP, Haryana vide order dated 07.11.2013, directed developers not to insist upon payment of EEDC. Complainants had made the payment of EEDC much before the stay order passed by Hon'ble High Court. The complainants are estopped by their own conduct act and as well as limitation from raising this issue.

4. On merits, all the averments of the complainants are denied except admitting payment of ₹ 3,07,725/- along with application and signing of builder buyer agreement. It is denied that respondent had signed the BBA on 28.12.2012 only after taking majority payments from the complainants. The demands were raised in accordance with the construction linked payment plan as opted by the complainants. The possession timelines were subject to force majeure and compliance of Space Buyer's Agreement including timely payment of demands raised by the respondent. Respondent had offered an alternative unit on 01.06.2016 in another ready to move in project 'Next door' as the project 'Park Central' was getting delayed because of the defaults committed by various customers. Said offer was not accepted by the complainants. It is also denied that respondent had collected 95 % amount before starting the construction or that the

complainants had paid ₹ 27,599,80/- till August 2013. Last payment was received from the complainants on 15.03.2013 and no payment against the sale consideration of the previous unit was received. Complainants have entered into a settlement deed on 04.02.2019 and two sets of floors buyer's agreement have already been sent to complainants for execution purpose. Complainants had agreed that they will not raise any dispute with respect to the previous unit bearing office space no. 107, Central Park but still raising the dispute with respect to delay penalty. It is denied that the amount collected on account of EDC has not been deposited with the Department of Town and Country Planning, Haryana. Further, complainants should not be concerned with the missed deadline of project Park Central as the unit is swapped in terms of settlement deed dated 04.02.2019. All grievances of the complainants have been redressed and settled by the respondent at the time of execution of settlement deed. Respondent denies that alternate unit no. E40-36-SF was to be delivered within 7 months with occupation certificate/completion certificate. Delay was beyond control of the respondent. The complainants are now entitled to get possession of new unit and their claims are limited to possession of new unit bearing no. E-40-36-SF and the previous transaction cannot be opened at this stage.

5. Arguments raised by both learned counsel for the parties have been carefully heard along with meticulous examination of the records of the case.
6. At the time of filing of the present complaint, the complainants had

sought relief of ₹ 10,00,000/- as compensation as the respondent had accepted 80% of the unit price before agreement to sell and settlement has also not been honoured. Under relief no. 2 the complainants have sought refund of amount of ₹ 27,59,980/- along with interest at the rate 18%. Under relief no. 3 they have sought compensation of ₹ 10,00,000/- as delay interest, ₹ 5,00,000/- on account of mental harassment, ₹ 1,00,000/- as litigation charges and ₹ 5,00,000 as loss of opportunity. Under relief no. 4 the complainants have sought to penalize respondent for collecting external EDC despite stay by Hon'ble High Court and further not depositing with Department of Town and Country Planning, Haryana. Vide order dated 14.11.2019 passed by Shri Anil Kumar Panwar, the then learned Adjudicating Officer, learned counsel for the complainant had withdrawn all the reliefs except compensation. Accordingly the complaint was treated for compensation. In view of order dated 14.11.2019 passed by Shri Anil Kumar Panwar, the then learned Adjudicating Officer, the remaining reliefs except compensation are not being discussed.

7. Perusal of the file shows that the complainants had booked office space no. 107 on first floor having super area of 616 square feet situated in BPTP Park Central, Sector 85, Faridabad on payment of ₹ 3,07,0725/-. Space buyer agreement was executed between the parties on 28.12.2012. Till March 2013, the complainants had paid an amount of ₹ 27,59,980/- against the basic sale price of ₹ 23,06,304/-. The possession was to be delivered till June 2016, Since the

respondent failed to offer possession, repeatedly it was informed to the complainants via emails regarding delay in offer of possession and it was also informed that compensation for delay would be granted and possession will be offered in June 2018. The respondent had also offered re-allotment of cheaper units but at far off places, which was refused by the complainants. Again, it was informed by the respondent that possession would be offered in June 2018 along with delay compensation. The complainants had filed Complaint No. 380 of 2018 with The Haryana Real Estate Regulatory Authority seeking refund. Settlement was arrived at between the parties on 04.02.2019. Vide said settlement, alternate unit E-40-36-SF having super area of 1047 square feet situated in Park Elite floors, Faridabad was allotted. The possession was to be delivered within 7 months i.e. up to 04.09.2019. In view of settlement arrived at between the parties, Complaint no. 380 of 2018 was withdrawn by the complainants before Hon'ble Authority. The present complaint was filed on 03.09.2019. The respondent has not offered possession either at the time of filing of present complaint or during the pendency of the complaint. It was only at the time of final arguments that learned counsel for the respondent had stated that the complainants could take possession of the alternate unit. It is pertinent to mention here that till now no offer of possession has been given in writing to the complainants.

8. As per record amount of ₹ 27,59,980/- was paid by the complainants till 15.03.2013 and possession was to be delivered till 28.06.2016. It is apparent on the record that neither possession was delivered by the respondent to the

Sailesh Gupta



complainants nor delay compensation was paid despite sending a number of emails. The amount of ₹ 27,59,980/- was being used by the respondent till 04.02. 2019.

Section 71 (3) of the RERA Act reads as:

“While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such **compensation or interest**, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

While adjudging compensation to be paid to the complainant, factors enumerated in section 72 of the RERA Act are to be taken into consideration, which is reproduced as :

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

9. It was only on 4.02.2019 that settlement was arrived at between the parties. After settlement, on 6.02.2019, Complaint no. 380 of 2018 was withdrawn by the complainants which was pending before Hon'ble Authority and relief sought was refund. At the time of settlement, it was agreed that the possession of the alternate unit would be delivered within 7 months i.e, 04.09.2019. Despite that possession has not been offered till 27.07.2021. The amount of ₹ 27,59,980/- was further being used by the respondent till 27.07.2021. For all these around 8 long years the respondent had been utilising the amount of ₹ 27,59,980/- paid by the complainants which can be termed as disproportionate gain to the respondent and loss to the complainants, which can be further termed as a result of continuous default committed by the respondent. It would be in the interest of justice if the compensation to be paid to the complainants is determined after taking into account the default from 28.06.2016 to 04.02.2019 i.e. is two years seven months and seven days and further from 04.09.2019 to 27.07.2021

i.e. one year ten months and twenty-three days and utilisation of said amount by the respondent. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6% per annum.

### Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹ 27,59,980/-	28.06.2016 to 04.02.2019	6 %	4,31,918/-
₹ 27,59,980/-	04.09.2019 to 27.07.2021	6 %	3,13,958/-
Total			7,45,876/-

10. Sequel to aforesaid discussion, this complaint is allowed. ₹ 25,000/- is assessed as cost of litigation to be paid by the respondent to the complainants. Respondent is directed to pay an amount of  $(7,45,876 + 25,000) = ₹ 7,70,876/-$  (Seven lakh seventy thousand eight hundred and seventy-six rupees only) to the complainants in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of the amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

Sarita Gupta

11. In these terms, the present complaint stands disposed of. File be consigned to record room after uploading order on the website of the Authority.

27.07.2021

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

Note: This order contains 12 pages. All the pages have been checked and signed by me.

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

