

**BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

Complaint no. : 1907 of 2019
Date of decision : 22.10.2021

SANDHYA SHARMA
R/O : 370 Kangra Niketan
Outer Ring Road,
Vikas Puri, New Delhi - 110018

Complainant

Versus

M/S BPTP Ltd.
ADDRESS : M-11, Middle Circle
Connaught Circus, New Delhi-

Respondent


APPEARANCE:

For Complainant:

For Respondent:

Sh. Gulab Singh- Advocate

Sh. Venkat Rao- Advocate


A.O.

22-10-21

ORDER

1. This is a complaint filed by Sandhya Sharma (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) against respondent/developer.
2. As per complainant, on 06.03.2012, she booked a flat in respondent's project **Amstoria** situated at Sector 102, **Gurugram**. She (complainant) made payment of Rs 10,79,302 as booking amount for a unit admeasuring. The respondent vide allotment letter dated 21.03.2012, allotted a unit no. A-137-FF, admeasuring 1999 sq. ft. for a total sale consideration of Rs 11,774,505.14.
3. She (complainant) had booked said unit through Mr Gaurav, who represented to be employee of respondent and had promised to give 6 % discount on total sale consideration of unit. As complainant did not receive any discount as promised by Mr. Gaurav, she visited the office of respondent, where she was informed that Mr Gaurav was not an employee of respondent and he was infact one of the brokers of respondent.
4. There is high-tension electricity wires running over the allotted unit. The respondent kept on raising payment demands without resolving the issue of removing high-tension



electricity wires and construction was not possible, till the same are removed. She (complainant) requested respondent to show the DTCP license of the said project, but respondent failed to do so.

5. The respondent a copy of one-sided builder buyer's agreement, to which complainant objected and requested to make necessary changes. The respondent never sent revised buyer's agreement.
6. As per clause No. 4 of application form of advance registration, the possession was scheduled to be delivered within period of 30 months from the date of allotment letter. While according to Clause 13.3 of agreement for sale, possession was to be delivered within 30 months from the date of execution of buyer's agreement.
7. She (complainant) paid Rs 61,05,161, as per the payment demands raised by the respondent but the latter failed to execute the buyer's agreement and further failed to give any information about the commencement and progress of construction work of the project.
8. In this way, respondent has committed gross violation of the provisions of section 18(1) of the Act, by inordinately delaying the delivery of the possession. The booking of the unit was made in the year 2012 and even till 2019, respondent did not complete construction work.

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9. Contending all this, the complainant has sought refund of entire amount of Rs 61,05,161 paid by her till now along with interest @ 18 % per annum and Rs 1,00,000 as cost of litigation.

10. The particulars of the project, in tabular form, as given by complainants are reproduced as under:

S.No.	Heads	Information
PROJECT DETAILS		
1.	Project name and location	" BPTP Amstoria ", Sector 102, Gurugram,
2.	Project area	126.674 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	58 of 2010 dated 03.08.2010 and 45 of 2011
5.	Name of License	M/s Countrywide promoters
6.	RERA Registered/ not registered	Registered
UNIT DETAILS		
1.	Unit no.	A-137-FF
2.	Unit measuring	1999 sq. ft.
3.	Date of Booking	06.03.2012
4.	Date of Allotment	21.03.2012,
5.	Date of Buyer's Agreement	Not Executed
PAYMENT DETAILS		

6.	Total sale consideration	Rs 11,774,505.14
7.	Amount paid by the complainant	Rs 61,05,161
8.	Payment Plan	Construction linked

9. The respondent contested the complaint by filing written reply.

It is contended that the complainant has defaulted in making timely payment of instalments. The demands were raised as per the payment plan. It (respondent) issued demand letter (upon reaching the milestone ' casting of 1st floor roof slab) for an amount of Rs 12,98,620.57 payable by 09.11.2018. Again, vide reminder letters dated 16.11.2018, 18.12.2018 and 11.02.2019, she (complainant) was requested to clear outstanding dues. As complainant failed to pay the said money, final reminder notice dated 23.04.2019 sent through which the complainant was requested to clear outstanding dues within 15 days from the date of said letter but complainant failed to do so.

10. Two copies of buyer's agreement were sent to complainant vide cover letter dated 02.04.2012 but complainant did not execute the same. The complainant cannot seek relief under section 18 of RERA act, 2016, because under this provision, complaint could be filed only if promoter fails to deliver the unit as per terms of agreement but in this case, no agreement has been executed between the parties.

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11. Respondent clarified that all the necessary clearances for said project have been obtained by it (respondent) and construction work at the site is ongoing at full swing.
12. It (respondent) vide email dated 06.04.2021, offered an alternate unit, in same project, but complainant did not show any interest in said offer. Further, through various emails, it kept the complainant updated and informed, about status of construction.
13. Even otherwise, as per terms of booking form, possession was to be delivered within 30 months from the date of sanctioning of building plan or execution of the builder buyer's agreement, whichever is later, with an additional grace period of 180 days. The building plan was sanctioned on 19.09.2012 and BBA was never executed between the parties and accordingly, the possession timeline never started.
14. The possession of unit depends upon force majeure circumstances and other factors. The proposed timeline of possession has been diluted due to defaults committed in timely payment of instalments, by allottees.
15. Furthermore, averred that the revised plan of entire colony submitted to DTCP has affected the infrastructure development of the entire colony including Amstoria Floors. The said revision in demarcation was necessary considering

the safety of the allottees and to meet the area requirement for community facilities. In view of said changes, it was imperative that said approvals are in place before floors were offered to allottees and the delay if any, is due to factors beyond its control.

16. Contending all this, respondent prayed for dismissal of complaint.

17. Admittedly, terms and conditions of allotment (BBA) sent by respondent were not agreed by complainant. While challenging maintainability of present complaint, respondent also claims that no agreement (contract) was entered between the parties of this case. Neither booking form filled up by the complainant nor allotment letter sent by respondent can be termed as contract. Each of these was signed by one party only. Both of parties did not agree on any agreement. At the most aforesaid documents can be called as 'offer to invite offer' and an 'offer of allotment'. When parties did not agree on terms of contract, the respondent could not ^{have} retained money received from complainant.

18. Even if, it was a verbal contract, the respondent was bound to offer possession in a reasonable time. It is not claim of respondent that construction work of the unit of complainant has been completed even till today or its ^{ready} ~~ready~~ in position to give ^{the} possession of said unit. The respondent is stated

to have offered alternative unit to the complainant, but the latter could not be compelled to accept the same.

19. The respondent has mentioned about revision of building plan but there is no document on record to show that it (respondent) asked for ^{consent} approval of complainant in this regard.

20. Considering facts stated above, complainant is well within her right to claim refund of amount paid by her. Complaint in hands is thus allowed and respondent is directed to refund entire amount paid by complainant i.e. Rs 61,05,161 within 90 days from today, with interest @ 9.3 % p.a. from the date of each payment, till realisation of amount. A cost of litigation etc Rs 50,000 is imposed upon respondent to be paid to the complainant.

22.10.2021


(RAJENDER KUMAR)

Adjudicating Officer

Haryana Real Estate Regulatory Authority

Gurugram

Judgement uploaded on 28.10.2021.