

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

Complaint. No. 605/2018- Babina Gupta

.....Complainant

Versus

Puri Construction Pvt. Ltd.

.....Respondent

Date of Hearing: 21.02.2019 (4th hearing)

Coram: - Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance: - Shri Raju Bajaj, Counsel for Complainant
Shri Himanshu Juneja, Counsel for Respondent

ORDER:

1. The complainant's case is that she was allotted an apartment no. T11-4D, 4th Floor, measuring 176.05 sq. meters in a project named "Aanand Vilas", Sector 81, Faridabad, Haryana. The apartment buyer's agreement was executed between both the parties on 30.12.13. The complainant has already paid an amount of Rs. 1,13,76,053/- against the total sales consideration of Rs. 1,49,22,148/-. The respondent had committed to deliver possession of the apartment within 48 months plus a grace period of 180 days from the date of agreement, meaning thereby possession shall be given prior to 01.07.18.



But the respondent has failed to deliver possession of the apartment till date. The complainant has visited the construction site numerous times and found that the project will take at least three more years to complete.

In view of the above facts, the complainant sent a demand notice dated 13.08.18 to the respondent asking for refund of the paid amount.

Whereas, the respondent replied to the said notice on 22.08.18 stating that demand made by the complainant is completely baseless and not maintainable.

Under given circumstances, the complainant prays for refund of the paid amount along with interest, compensation and costs of litigation or any other relief as the Authority may deem fit.

2. On the other hand, the respondent pleaded that the present complaint was not maintainable as it could be filed only if there was a breach or violation of any provisions of the Act. The Authority has no jurisdiction to entertain this complaint as neither there is any breach of obligations by the respondent nor there is any delay in delivery of possession of the unit.

The respondent further submitted that there have been several reasons and circumstances beyond his control for delay in delivery of possession. Demonetization is one of them. The National Green

Tribunal had ordered to stop all construction activities in the National Capital Region to control the pollution. As a result, no work took place at site for three to four months. Further, the Environment Pollution Authority had directed to stop the construction activities in National capital Region for ten days starting from 01.11.18 to 10.11.18 which led to further delay. The State of Haryana has also issued a policy on 18.02.15 for change in beneficial interest. The respondent applied for the same and a considerable amount of time was spent in obtaining the same.

The afore-mentioned circumstances along with demonetization have affected progress of the project. Moreover, complainant herself has defaulted in making payments and an amount of Rs. 31,48,000/- is still outstanding. The respondent had sent demand letters on 01.12.15 and 04.08.16 and the complainant had not paid the whole amount. The complainant vide e-mail dated 12.06.15 even requested the respondent that remaining amount shall be paid at the time of Occupation Certificate and further requested to waive-off the interest for said period.

Learned Counsel for the respondent stated in the Court today that the project is near to completion and will be delivered by April, 2019 as respondent has already applied for the grant of Occupation Certificate.



In view of all aforesaid facts, the present complaint is liable to be dismissed.

3. Considering the written as well as verbal arguments of both the parties, the Authority observes that the averment of the respondent that the Authority doesn't have jurisdiction in this case is not correct. This issue has already been decided by the Authority in **complaint no. 144 Sanju Jain V M/s TDI Infrastructure Ltd.**

Further, the provisions of the RERA Act, 2016 support the above observation made by the Authority in complaint no 144 which are as follows:

Section 11 (4) provides numerous obligations and functions of promoters towards allottees and the promoter has miserably failed to perform his obligations. *in this case also.*

Section 34(f) further provides that the Authority is duty bound to ensure compliance of obligation cast upon the promoter. Hence, the Authority has full jurisdiction in this case also to adjudicate the complaint of the allottee.

Further, as learned counsel for the respondent informed the Authority today that he has already applied for grant of occupation certificate and the project will be completed by April, 2019, therefore, at this stage relief of refund is not justified.

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The Authority, further, observes that as the project is at the completion stage, therefore, order of refund will jeopardize the whole project. Hence, the Authority directs the respondent to deliver the possession of the apartment to the complainant latest by 31.05.19.

The respondent is further directed to issue a revised statement of accounts to the complainant showing the amount payable by the complainant. While issuing such statements, the respondent is directed not to charge the interest on delayed payments, if any, more than 9% per annum. Further, the respondent is directed to provide delay compensation to the complainants as per order passed by this Authority in a bunch of petitions with the lead case **Complaint No.113 of 2018 titled Madhu Sareen V/S BPTP Ltd** and in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructure Pvt. Ltd.** from the date of possession to be given as per agreement dated 30.12.13 till the date of actual taking over of the possession to the complainant.

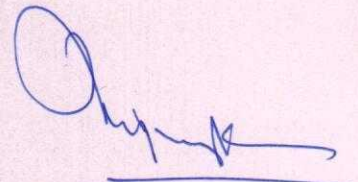
Disposed of. The order be uploaded on the website and files be consigned to the record room.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member



Rajan Gupta
Chairman