



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1.COMPLAINT NO. 1691 OF 2019

Rohit Kapoor and Anr.

....COMPLAINANTS(S)

VERSUS

BPTP Limited

....RESPONDENT(S)

## 2.COMPLAINT NO. 1693 OF 2019

Mamta Kapoor and Anr.

....COMPLAINANTS(S)

VERSUS

BPTP Limited

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 09.11.2021**

**Hearing: 19<sup>th</sup>**

**Present: Shri N.K Setia, Ld. counsel for the Complainant through video-conferencing.**

Shri Hemant Saini and Shri Himanshu Monga, Learned counsel for the Respondent.

**ORDER: (RAJAN GUPTA-CHAIRMAN)**

1. Captioned complaints are similar and relates to the same project of the respondent. Complaint no. 1693 of 2019 is taken as lead case. Today is the 19<sup>th</sup> hearing of this case. Arguments of both the parties have been heard.


2. These matters were argued at length today. Both the parties were also directed to submit their written arguments. Both the parties have submitted their written arguments. Complainant submitted the same on 29.11.2021 and respondent on 01.12.2021. Upon perusal of the written arguments as well as the oral submissions made, the Authority observes as follows: -

- i) The complainant is a subsequent allottee who stepped into the shoes of original allottee who initially had booked a plot A-29 with the respondents on 16.01.2006. The complainant alleges that he has paid an amount of Rs.66,24,381/- to the respondents against basic sale price of Rs. 39,03,850/-. The respondents, however, admits an amount of Rs. 62,79,380.50/- paid by the complainant.
- ii) Plot buyer-agreement had not been signed between the parties, even though a blank proforma was sent by respondents to the complainant, however under certain circumstances the same had not been executed.





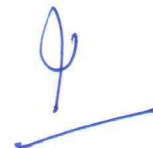
- iii) The complainant is aggrieved on account of fact that the respondents have charged much more money from them than agreed. Against the alleged excess amount charged by respondents, complainant had approached Hon'ble NCDRC.
- iv) By way of an interim order dated 14.12.2015, Hon'ble NCDRC had ordered respondents to handover possession of the plot to complainant. Respondents duly complied with the same and handed over possession of the plot to complainant on 01.12.2016. Complainant accepted the possession without protest.
- v) Thereafter, the complaint filed before NCDRC was dismissed with the finding that complainants cannot be called consumers under the Consumer Protection Act. Against such orders of Hon'ble Commission, complainants approached Hon'ble Supreme Court by way of appeal. The complainants however did not pursue the appeal, instead they withdrew the same with a liberty to file a review petition before Hon'ble NCDRC. The complainants filed a review petition before Hon'ble NCDRC and the same was dismissed by way of a detailed order dated 23.08.2018.
- vi) Thereafter, the complainants approached this Authority by way of captioned complaint in July, 2019.



vii) The complainants are agitating the same grievances as had been raised before Hon'ble NCDRC stating that respondents have charged excess amount from them and also, they should be compensated for delay in handing over of possession.

3. Authority has heard this matter several times and had even given its views about various charges levied by respondents. Without going into merits of those charges, question that arises before the Authority is whether it is lawful for complainant to approach this Authority under RERA Act when they had raised similar grievances before the Hon'ble NCDRC and Hon'ble NCDRC, had part decided the matter, further whether correct remedy available to complainant is to file an appeal before Hon'ble Supreme Court, which they did but voluntarily withdraw, and now they are approaching this Authority for adjudicating same grievances afresh.

4. The Authority is of the view that complainants had made all payments without raising any protest at the time of making those payments. They have taken over possession of the plot in furtherance of orders of Hon'ble NCDRC. On account of final order having been passed by Hon'ble NCDRC in the original complaint as well as subsequent review application, now lawful remedy available to complainant was to approach Hon'ble Supreme Court by way of appeal. They did file such an appeal but withdrew it on their own.



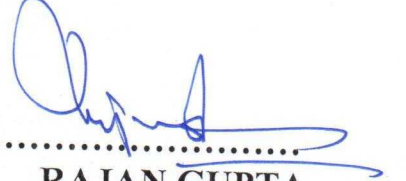


5. In the circumstances, the Authority is of the view that at this stage it is not appropriate to invoke jurisdiction of this Authority. Substantial part of obligation of the respondents has been discharged in pursuance orders of Hon'ble NCDRC i.e., possession of plot has been delivered. Subsequent orders of Hon'ble NCDRC only amounts to saying that the commission has refused to go into merits of the allegations that respondents have charged excess amount from the complainant. Authority is of the view that the remedy now available to the complainant is to approach next Appellate Court i.e., Hon'ble Supreme Court. After getting part remedy from Hon'ble NCDRC now approaching this Authority for adjudication of remaining grievances will be incorrect process of law. Citizens must follow the hierarchy of courts prescribed in the law. Complainant has opted to seek remedy under Consumer Protection Act. The correct course of action is to take that process to its logical end. Seeking part remedy under Consumer Protection Act and part remedy under RERA Act, appears to be an incorrect process.

6. Accordingly, without going into merits of the case, Authority expressed its inability to entertain this complaint on account of reasons stated above.



**Disposed of.** File be consigned to record room after uploading the orders of the Authority.



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**RAJAN GUPTA  
(CHAIRMAN)**



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**DILBAG SINGH SIHAG  
(MEMBER)**

