

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA**

**Complaint No. :1096/2018
Date of hearing : 28.02.2019
Hearing : 3rd**

M. C. Mittal HUF

....Complainant

Versus

M/s BPTP Ltd.

....Respondent

CORAM :

Sh. Rajan Gupta, Chairman
Sh. Anil Kumar Panwar ,Member
Sh. Dilbag Singh Sihag , Member

APPEARANCE :

Sh. Arjun Kundra, counsel for complainant
Sh. Hemant Saini, counsel for respondent

ORDER :

1. The Complainant, in the present case, submitted that he had booked an office space admeasuring 616 Sq. ft. on 03.11.2010 in respondent's project named "ParkCentral,Parklands", Faridabad. An allotment letter was issued in the favour of complainant on 26.12.2010. There was no mention of parking charges at the time of booking and allotment. Further, after 2 years of allotment of the office to the

complainant and after repeated requests of the complainant, respondent company issued a copy of buyer's agreement for signatures. Complainant reiterated that the respondent had drafted the agreement in an arbitrary manner and it was noticed that terms of the same were quite different from what had earlier been agreed between the parties. Faced with this situation, the complainant returned the copy of the agreement with a letter dated 05.11.2012 for modification of the same. The most important discrepancy pointed out by the complainant was that BSP was mentioned @ 4150/- per sq. ft. whereas the unit was allotted @ Rs.3762/- per sq. ft. Other discrepancy was regarding the demand raised on account of parking space which was not opted by the complainant at the time of booking. After several deliberations with the respondent, complainant was assured that a fresh buyer's agreement shall be issued and delay in execution of the same shall not affect the interests of the complainant in any way.

2. The complainant further averred that at time of booking it was promised that possession of the unit shall be delivered within 3 years from the booking and accordingly deemed date of delivery comes to be November 2013. But due

to fraudulent tactics of the respondent, no agreement had been executed even after delay of 5 years of the booking. Then, after repeated requests of the complainant, finally a fresh and amended copy of the buyer's agreement was issued by the respondent on 13.04.2016. With regard to this, the complainant agitated that time period for delivery of possession had been mentioned as 36 months from the execution of the agreement. The complainant averred that non-signing of an arbitrarily framed agreement had caused a ~~due~~ hardship to him in a way that now as per the amended agreement, deemed date of delivering possession would be April 2019. In such case, there will be unreasonable delay on the part of respondent in handing over possession. Rather, the complainant had to wait for around 9 years for getting his purchased unit even after making 95% payment i.e. Rs. 23,98,137/-. Faced with his situation, the complainant issued protest letter dated 27.04.2016 and 04.05.2016 and also returned the agreement for further amendment vide letter dated 07.05.2016. The complainant reiterated that the respondent neither delivered the possession of the unit nor executed the fresh agreement. Then after waiting for a long



period, complainant again requested for possession with delay compensation vide letter dated 05.09.2017, in response to which, the respondent, while admitting the delay in completion of the booked unit, offered the complainant to shift to their other project. To this, complainant refused to shift and cancelled the booking seeking refund of paid amount with interest vide letter dated 19.01.2018. Complainant repeatedly requested for refund and respondent continued to offer an alternative unit.

3. In these circumstances, complainant waited for response from respondent's side but respondent failed to process his request for refund. Even after serving a legal notice dated 21.06.2018, respondent neither delivered possession nor refund his paid amount nor executed the agreement. Aggrieved by this, complainant approached this learned Authority seeking refund of his deposited amount along with interest.

4. Respondent's stand, on the other hand is that the complainant had defaulted in making timely payments of various instalments which had resulted in delay in handing over possession. Further, with regard to the space buyer's agreement, the respondent submitted that the said agreement

had been set on terms and conditions agreed in booking application. However, the complainant raised two queries, one with regard to BSP and other being levy of parking charges. Both of these queries were addressed by the respondent Company. Complainant was satisfied with the clarification given by the company with regard to BSP and parking charges were waived off by him. Respondent further submitted that after having given satisfactory clarification to the complainant, fresh agreement vide cover letter dated 13.04.2016 was sent to the complainant for execution after making modifications. But complainant failed to send it back for execution by both the parties. Rather, this time, he raised another issue relating to proposed timelessness for delivering possession which were linked to the execution of the agreement. To this, respondent even agreed to take the date of execution of the same as in October 2012 and requested the complainant to visit the office for signing the agreement. However, complainant failed to do the needful and even after collecting the agreement from the office on 13.02.2017, he had not returned the same. So, complainant's own inaction had resulted in non-execution of the agreement. Moreover, in terms of the application for

allotment duly signed by the complainant, timeline for possession is directly linked to the execution of the space Buyer's agreement or payment of 30% of BSP whichever is later. Said application is binding on both the parties.

5. Respondent reiterated that with a view to resolve the matter respondent company vide emails dated 01.06.2016, 27.09.2017 and 24.01.2018 offered the complainant to re-allot/transfer its booking to unit in another project, named "Next door" which was ready to move in project in Faridabad itself. However, complainant refused to accept the said offer. As far as the status of project in question is concerned, respondent has mentioned in his reply that construction shall be completed shortly and respondent company would be offering possession soon. Learned counsel for respondent also stated that respondent company shall be offering possession by December 2019.

6. Respondent has made a clear statement that they are willing to offer possession by December 2019 along with interest for delay in accordance with clause 20 and 22 of the duly executed booking application dated 03.11.2010 which specifies that in case of delay in offering possession by the

promoter, allottee shall be entitled to be compensated @ Rs. 10/- sq. ft. per month for the period of delay in making offer of possession. So, respondent seeks dismissal of the complainant's prayer for refund as they are willing to offer possession soon.

7. In response to the written statement filed by the respondent, complainant in his rejoinder has submitted that there is no hope of completion as promised by the respondent because it has been confirmed by information sought under RTI Act that applicant company has applied for approval of building plans of commercial project in question vide their application dated 14.09.2018 and the same was under consideration as on 26.12.2018.
8. Further, the complainant submitted that neither he has agreed to wait for more than 8 years nor he defaulted in making payments. In addition to this, it has been further reiterated that demands raised by the respondent included parking charges which was not justified and therefore not paid. Otherwise, complainant denied the delay on his part.
9. In view of the submissions made by both the parties the learned Authority is of considered opinion that in the present case booking has been done a way back long in November 2010.

Further, respondent issued a space buyer's agreement in October 2012 which is such a long period that if issuance agreement would not have been delayed by 2 years, it would have been executed earlier and timeline for completion of the project would not be delayed this much. So, respondent has deliberately caused delay in issuance of the agreement and even after that, there were some loopholes in the agreement, consequent to which it could not be executed even in 2012 and then intending to cause more delay, it took 4 more years to issue a fresh agreement. Then an amended agreement was issued in 2016, April. In view of this non-serious behaviour of the respondent, it is observed that it would be injustice to the complainant if after waiting for 2 years for issuance agreement and again waiting for 4 years for a amended agreement, he has to wait again for the possession as per the timelines in the fresh agreement dated 13.04.2016. Rather, the complainant had cancelled the booking on 19.01.2018. So, it is directed that respondent shall refund the entire amount deposited by the complainant along with interest in accordance with Rule 15 of the HRERA Rules, 2017 i.e. @ SBI highest marginal cost of lending rate plus 2 percent.



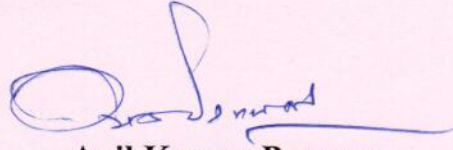
Case is disposed of in abovesaid terms and file be consigned

to record room.

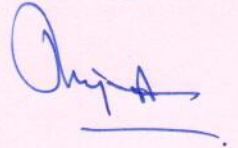
Separate order recorded.



Dilbag Singh Sihag
Member



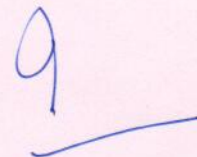
Anil Kumar Panwar
Member



Rajan Gupta
Chairman

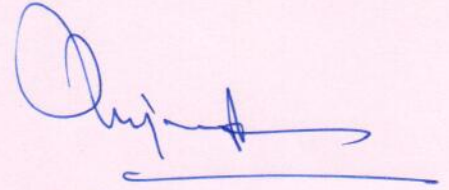
I agree with the judgement authored by my learned colleagues. I would arrive at the same conclusion with the logic that the facts of the matter clearly leads to the conclusion that the agreement between the parties has been completely frustrated firstly for the reason of inordinate delay in execution of the agreement and secondly for the reason that the project even now is not likely to be completed in near future. 95% of the payment was made in the year 2012 but the project building is far from completion even now. The allottees cannot be asked to wait endlessly for getting possession of their apartments. Admittedly, an application for approval of the building plans of the project in question was filed in September,2018 which means that even after a lapse of 8 years from the date of booking the project was at the stage of planning only.

For the reasons of agreement having been completely frustrated, the refund to the complainants of the entire paid amount is fully justified along with interest from the date of payment upto the actual date



of payment at the rate prescribed in Rule 15 of the
HRERA Rules,2017.

I order accordingly.



Rajan Gupta
Chairman