

**HARYANA REAL ESTATE REGULATORY AUTHORITY
PANCHKULA**

Complaint No. :923/2018
Date of hearing : 14.03.2019
Hearing : 4th

Sanjay Singh Tanger

...Complainant

Versus

M/s BPTP Ltd.

...Respondent

CORAM :

Sh. Rajan Gupta, Chairman
Sh. A.K. Panwar ,Member
Sh. D.S.Sihag , Member

APPEARANCE :

Sh. Simarpal Singh Sawhney, Counsel for complainant
Sh. Hemant Saini, Counsel for Respondent

ORDER :

1. Complainant, while narrating his case, stated that he had booked a flat in respondent's project named "Park Elite Floors" Faridabad on 25.05.2009. An allotment letter dated 24.12.2009 was issued in favour of the complainant whereby he was allotted a flat bearing No. P4-09-FF. Further he stated that the respondent started raising demands without even executing the buyer's agreement. Then, after repeated requests of the complainant, buyer's agreement was

executed between them on 26.04.2010. On the same day, an addendum was also executed between them by which possession clause i.e 4.1 of the main agreement was amended. Complainant reiterated that the addendum was against the agreed terms as respondent had assured to hand over possession within a period of 24 months from payment of booking amount. Now as per the addendum, possession was to be handed over in 24 months from the date of agreement or on completion of payment of 35% of BSP along with 20% of EDC and IDC by the purchaser, whichever is later. Accordingly, the time period in which respondent had to deliver possession had already lapsed on 26.04.2012 thereby causing a delay of more than 6 years. The basic sale price of the flat was agreed at Rs. 24,53,762/- after discount of Rs. 1,02,240/- and till date complainant had already paid Rs. 27,57,981/-. Complainant further stated that he had visited the site many a times and found that project is still under construction and external works in the building, land scape, plumbing, electrical work, wooden work and other such development & facilities are not completed till date. Now, the



grievance of the complainant is that even after paying such a huge amount & after delay of more than 6 years, possession has not been offered till date. He is now seeking direction of this Authority to the respondent for handing over the possession of the purchased unit along with compensation for delay in handing over possession.

2. Respondent, on the other, hand had raised certain objections and questioned the maintainability of this complaint on following grounds:
 - i. Unit in question is an independent floor being constructed over a plot area admeasuring 209.30 sq. metres and as per sec.3 of the Real Estate (Regulation and Development Act),2016, registration is not mandatory for an area proposed to be developed that does not exceed 500 sq. metres.
 - ii. Provision of Real Estate (Regulation and Development Act),2016 can't be invoked qua the agreement executed prior to the coming into force of the said Act and in this matter, agreement had been executed between the parties on 26.04.2010 and same can't be reopened.



- iii. Clause of 33 duly signed agreement provides for referring the matter to arbitration but here the complainant is in breach of the terms of agreement and never took any step to invoke arbitration.
- iv. In relation to the delay in project, it has been mentioned in the written statement that despite availing of additional incentives like Timely Payment Discount (TPD) of Rs. 77,963/- complainant committed occasional defaults in making timely payments which adversely affect cash flow and resulted in delay in completion of the project.
- v. Further, to rebut the fact regarding change in possession timeline by the respondent, it has been mentioned that as per clause 12 of the booking form, possession was tentatively proposed to be handed over within 24 months from the date of issuance of the sanctioned letter of the project. The same timeline has been adopted in the agreement dated 26.04.2010.

Further respondent denies the fact that addendum was executed on the same day. Respondent reiterated that an addendum to the agreement was executed on 31.08.2010



whereby timeline for possession was changed to 24 months from the execution of the agreement or on completion of payment of 35% of BSP and 20% of EDC and IDC, with a grace period of 6 months. So, possession was to be handed over within 24 months from the agreement.

3. Today, arguments of both the parties were heard.

Complainant, while arguing the case, has prayed for direction to the respondent to hand over possession of the purchased flat along with compensation for delay by the respondent. To this, the respondent made a statement that respondent company shall be in a position to deliver the flat by Dec 2019.

4. In view of the submissions made by the parties, the

Authority observes as follows: -

- i. The first challenge to the jurisdiction has been made on the ground that the floor area on which the floor to the complainant allotted measures less than 500 sq. mts. Thus, this project was not required to be registered therefore, the jurisdiction of this Authority does not extend to this case. This objection is not sustainable for the reason that the plot/floor is less than 500 sq. mts. is totally devoid of merits because this plot/floor is a part of larger colony being



developed by the respondent. The said plot/floor is not an independent project being developed by the respondent. Numerous such plots along with other buildings are being developed by the respondents as a part of this project and the licence. For this reason also the challenge to the jurisdiction is not acceptable.

- ii. Secondly, respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is also not sustainable in view of the detailed orders passed by this Authority in **complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well.
- iii. The third objection has been raised that as per the agreement the complainant was supposed to first refer to the matter to the Arbitrator. This too is not acceptable because Real Estate (Regulation and Development) Act, 2016 (RERA Act) provides for comprehensive remedies to the home buyers in the projects launched before coming into force of RERA Act and after coming into force of Act. Wherever substantive obligations on the part of




either of the parties still subsist, the Authority will have jurisdiction to deal with those matters to resolve them in a fair and just manner.

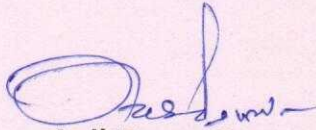
- iv. Further, with regard to the change in possession timeline by executing an addendum it is evident from the clause 4.1 of the agreement dated 26.04.2010 and from the addendum dated 31.08.2010 (Annexure P-4) that possession timeline was amended from "24 months from sanction of project" to 24 months of execution of the agreement or on completion of payment of 35% of BSP and 20 % EDC and IDC, with a grace period of 6 months". So, Authority observes that since the complainant had signed the addendum and agreed to such amendment, now he cannot wriggle out of the same. So, deemed date of possession shall be taken as per the addendum i.e. 26.04.2012 (within 24 months form the execution of agreement) and after grace period of 6 months, deemed date shall come to 26.10.2012.
- v. Even if there is occasional default by the complainant in making timely payments, the complainant had paid a substantial amount of Rs. 27,57,981/- till date against the BSP of Rs. 24,53,762/-. Moreover, even after receiving the entire consideration, respondent had caused the delay of more than 6 years. So, this

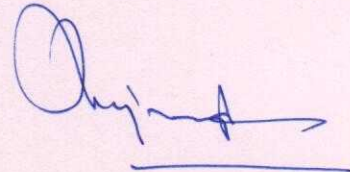
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delay is unjustified and the respondent is directed to offer possession by December 2019 along with delay compensation. Further the respondent is directed to calculate the compensation for delay in delivery of possession keeping in mind the principles already laid down by this Authority in complaint case no. 113/2018 titled "*Madhu Sareen vs M/s BPTP Pvt Ltd*" and complaint case no. 49/2018 titled "*Prakash Chand Arohi vs Pivotal Infrastructure Pvt. Ltd.*" at the rate prescribed in Rule 15 of HRERA Rules, 2017 i.e. at the rate equivalent to SBI highest marginal cost of lending rate plus 2%.

Consequently, case is **disposed of** in the abovesaid terms and file be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman