



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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1. Complaint No. RERA-PKL-1228 of 2018

Discovery Park Buyers Welfare Association. ...Complainant.

Versus

M/s B.P.T.P. Limited. ...Respondent.

2. Complaint No. RERA-PKL-633 of 2018

Discovery Park Buyers Welfare Association. ...Complainant.

Versus

M/s B.P.T.P. Limited. ...Respondent.

Date of hearing:- 06.03.2019

Hearing : 4th

Coram:-

Shri Rajan Gupta
Shri Anil Kumar Panwar
Shri Dilbag Singh Sihag

Chairman.
Member
Member.

Present:-

Shri Sandeep Kumar, Advocate for complainant.
Shri Hemant Saini, Advocate for respondent.

ORDER:- (Anil Kumar Panwar - Member)

1. Both the above captioned complaints were heard together and are being disposed of by this common order as the issues involved in these complaints are broadly similar. Complaint no. 1228 of 2018 shall be treated as lead case and discussion for deciding these cases shall be made with reference to the facts narrated in the lead case.

2. Complainant's case, in brief, is that the members of the complainant Association had booked flats in a project launched by respondent in the name of 'Discovery Park' in 2011-2012. Pursuant to these bookings, flats were allotted and Builder Buyers Agreements were executed between the respondent company and the members. The members had paid almost 95% of the dues as per the buyer agreement. Possession to them was to be delivered in 36 months from the date of sanctioning of plans or execution of the agreement whichever is later. Learned counsel for the complainant during the course of last hearing has apprised the Authority that the project in question was developed in two phases. Phase-I comprises of A,B,L,M,F,G,H,J,K towers whereas phase-II comprises of C,D,E towers. It was further stated that towers A,B,L,M are still under construction but occupation certificate had already been obtained by the respondent for towers F,G,H,J,K on



31.10.2018. However, in phase II, even excavation work has not started. The respondent while offering possession in November 2018 to the allottees of towers F,G,H,J,K has raised some additional demands on the account of increase in super area and some amenities, which have not been however made available yet.

3. The grievances raised by the members of the complainant association are firstly, that towers A,B,L,M are still not complete even as the time period for handing over possession in respect of these towers had already lapsed, secondly, that the possession in respect of towers F,G,H,J,K, had been offered without the promised amenities and thirdly, that additional illegal demands had been raised by the respondent with offer letter on the pretext of increase in area and for amenities which are not functional at present.

In such circumstances, the members of complainant association have prayed for issuing directions to the respondent for delivering them possession of the incomplete towers A,B,L,M within six months and to provide all promised amenities in the towers F,G,J,H,K. Complainant also seeks withdrawal of additional demands raised by the respondent and to issue fresh statement of accounts containing details of payable/receivable amount of both the parties.

4. The respondent has not disputed that the members of the complainant association were allotted flat in his project but has pleaded



that the case of all the members are not identical because the flats were booked and agreements were executed with them on different dates. It was pleaded that some of the members have been even offered possession. The respondent has pleaded that this Authority has no jurisdiction to deal with this complaint because the dispute between the parties is required to be adjudicated by an Arbitrator in terms of the buyer's agreement. It was also pleaded that the demands raised against the members are legal and payable to the respondent. It was further pleaded that occupation certificate in respect of towers F, G, H, J and K has already been obtained and construction in respect of towers A, B, L and M is in full swing. As regards the deficiencies alleged by complainant association, the respondent's plea is that the issuance of occupation certificate without removing deficiencies was not possible and grant of said certificate, in itself, belies the complainant's case about existence of the deficiencies in towers F, G, H, J and K while the deficiencies in respect of remaining towers will be bridged before obtaining the occupation certificate.

5. Parties have been heard and record has been perused.

6. At the outset, it deserves to be mentioned that this Authority has been created by the enactment of parliament for resolving the disputes between allottees and the promoters of real estate projects. Also, Real Estate (Regulation and Development) Act, 2016 (RERA) provides for



comprehensive remedies to the home buyers in respect of projects launched before coming into force of RERA and after coming into force of RERA. Where ever substantive obligations on the part of either of the parties subsist, the Authority will have jurisdiction to deal with those matters to resolve them in a fair and just manner.

7. Admittedly, the complainants are not interested in refund of the amount and their prayer is for providing them possession of the flats. It is also not a matter of dispute that the respondent had already obtained Occupation Certificate in respect of towers F, G, H, J and K and his plea regarding remaining towers is that the construction therein is in full swing and the same are likely to be completed in near future.

8. During the course of arguments, learned counsel for the respondent has submitted that towers A and B will be completed by December, 2019 while the towers L and M will be completed by July, 2020. So, the Authority, while granting some grace period to the respondent for obtaining Occupation Certificate, will direct him to handover to the allottees the possession of flats situated in towers A and B by March, 2020 and possession of flats situated in towers L and M by September, 2020.

9. The grievance of the complainants who are allotted flats in towers F, G, H, J and K is that several deficiencies occurring in their towers need to be rectified. So, the Authority will direct each of such



complainant to submit a list in writing to the respondent within 30 days of uploading of this order mentioning the deficiencies in detail. The respondent is directed to bridge such deficiencies within 30 days of the receipt of list of deficiencies by the concerned member. Any such member whose deficiency is not rectified by the respondent within the prescribed timeline, will be at the liberty to file a fresh complaint before this Authority for vindication of his grievance.

10. The members who have already been offered the possession have challenged the legality of certain demands raised through a notice accompanying the letter offering possession. The complainant has not explained in the complaint as to which demand is illegal and how same are unjustified but their learned counsel, during the course of arguments, have submitted that the complainants are mainly aggrieved by the demand of enhanced EDC, which is not presently chargeable due to the stay granted by the Hon'ble High Court; by the demand of preferential location charges raised even in respect of the members whose flats are not having preferential location; by demand of cost escalation; by the demand of club membership charges, recreational facilities charges and maintenance charges because such facilities have not been yet provided and by the demand of GST and VAT taxes.

11. This Authority has already passed a detailed judgment in complaint case No. 113 of 2018 titled as "Madhu Sareen Versus M/s



BPTP Limited” on 16.07.2018 laying principles for determining allottees' liability in respect of all such demands as are impugned in the present case. So, the Authority directs the respondent to re-assess the disputed amounts in terms of the principles laid down in Madhu Sareen case (Supra) and issue a fresh statement to the complainants in this regard. The allottee(s) feeling aggrieved by the demand(s) so assessed shall file a complaint challenging the said demand within 30 days of the receipt of the communication from the respondent or else he shall be liable to pay the demanded dues within 45 days of the receipt of the communication.

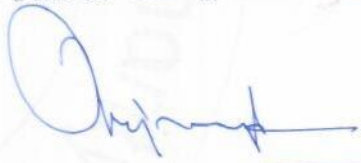
12. Lastly, it was argued that the respondent is raising an illegal demand on the pretext of increase in super area which the members are not liable to pay because there is factually no increase effected in the super area. This Authority vide detailed judgement passed in complaint case No. 607 of 2018 titled as “Vivek Kadyan Versus TDI” has already laid guidelines for raising demand on account of increase in super area. So, the respondent is directed to calculate the super area in terms of the principles laid down in the said judgment and is also directed to supply a detailed statement to the complainants indicating component-wise increase of super area. For the purpose of preparing such statement, the respondent shall calculate each component of super area strictly as per its dimensions indicated in the approved layout plan.




13. The Authority will further direct the respondent that he shall not raise any demand in respect of such amenities which are not presently available to the complainants. However, the respondent will be entitled to raise such demand after the amenity is provided and made available to the allottees .

14. Before parting with the order, it needs to be mentioned that the respondent was burdened with costs of Rs. 20,000/- payable to the Authority and Rs. 4,000/- payable to the complainant for not filing his reply in time and he has not paid the costs till date. So, he is directed to pay the same through demand draft or RTGS within two weeks of uploading this order.

The complaint is **disposed** of in view of the aforesaid terms. Order be uploaded on the website of the Authority. File be consigned to the record room.


Rajan Gupta
[Chairman]


Anil Kumar Panwar
[Member]


Dilbag Singh Sihag
[Member]