



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

Complaint No. 197 of 2021

Date of Institution: 14.02.2021

Date of Decision: 18.01.2022

1. Saurabh Berry s/o Pradeep Kumar Berry r/o J-122, First Floor, Vikaspuri, New Delhi-110018 through his power of Attorney Sh. Sarvaji Sood s/o Sh. Amrik Chand Sood, r/o # 1231, Sector-21B, Chandigarh.
2. Chanderprabha Berry w/o Pradeep Kumar Berry r/o J-122, First Floor, Vikaspuri, New Delhi-110018 through her power of Attorney Sh. Sarvaji Sood s/o Sh. Amrik Chand Sood, r/o # 1231, Sector-21B, Chandigarh.

...COMPLAINANTS

Versus

1. M/s BPTP Ltd, M-11, Middle Circle, Connaught Circus, New Delhi-110001.
2. Mr. Kabul Chawla, Managing Director, M/s BPTP Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001.

Sarita Gupta

3. M/s Countrywide Promoters Private Ltd and others, M-11, Middle Circle, Connaught Circus, New Delhi-110001.
4. Rajeev Gupta, Director of M/s Countrywide Promoters Private Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001.
5. Rakesh Roshan, Director of M/s Countrywide Promoters Private Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001.
6. Jawahar Chawla, Director of M/s Countrywide Promoters Private Ltd., M-11, Middle Circle, Connaught Circus, New Delhi-110001.

....RESPONDENTS

Hearing: 14th

Present: - Ms. Ramandeep Kaur, Advocate Counsel for Complainants
through VC
Mr. Hemant Saini, Advocate Counsel for all respondents
through VC

JUDGEMENT:

The brief facts culminating into the institution of present complaint are:

The complainants Saurabh Berry and Chanderprabha Berry purchased an independent residential floor bearing no. OM13-04-SF, second floor having tentative super area of 1478 sq.ft. in the respondent's project namely Park-81, Parklands, Faridabad. Floor buyer agreement between the complainants and respondent no.1 was executed on 07.07.2011. An addendum dated

21.07.2013 to the agreement was executed. The complainants were offered construction linked plan and accordingly, the complainants had deposited ₹27,23,603.65/- being 84.08% out of the total cost of ₹32,39,113.72/- before taking possession of independent residential floor. No outstanding dues are pending against the complainants as last installment was paid by them in the year 2016. As per agreement, the possession of independent residential floor was to be delivered on 07.01.2015. The respondents could not adhere to the said agreement and failed to give possession to the complainants. Since possession could not be delivered to the complainants, the complainants had instituted the present complaint on 14.02.2021. The complainants have paid ₹15,464/- out of ₹50,000/- on account of club membership charges but club has not come into existence. The complainants have deposited a sum of ₹27,667/- towards VAT. VAT came into force in the year 2016 and possession was to be delivered in the year 2015. Had the respondents delivered the possession on time, the liability of VAT would not have fallen on the complainants. Complainants are seeking delay interest as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the amount of ₹27,23,603.65/- from the date of deposit of each instalment till the date of actual payments, refund amount of ₹15,464/- paid towards club membership charges, ₹27,667/- paid towards VAT, compensation of ₹5,00,000/- for financial and mental distress, gross harassment, disconsolateness and agony, litigation cost of ₹70,000/- and to restrain the

respondents from issuing any fresh demands such as holding charges or cancelling the allotment.

2. Upon notice, respondents appeared through counsel and filed joint written statement taking preliminary objections that the complaint is frivolous, vexatious and devoid of any merits. The complainants had purchased an independent residential floor out of their own free will. It is admitted that possession was to be delivered within 36 months from the date of execution of floor buyer agreement, but the possession could be delivered only when the entire outstanding dues would be paid by the allottee on time. The delay was due to force majeure reasons which were beyond the control of the respondents. The stipulations of the agreement are enforceable. Since the unit in question is an independent residential floor being constructed over a plot area tentatively measuring 137.31 sq.mtrs., as per section 3(2)(a) of RERA Act, registration is not required. The complainants again rely on provisions of RERA Act as the agreement was executed between respondent no. 1 and complainants prior to coming into force of RERA Act. The agreement entered into between the parties shall be binding on all the parties and cannot be re-opened. The complaint is not maintainable as the parties had agreed under clause 33 of independent residential floor agreement to make an attempt to amicably settle the dispute, if dispute is not amicably settled, to refer the matter to arbitrator. Instead of doing this, complainants have approached this Hon'ble Court. The complainants have not

approached the Court with clean hands and the complaint is liable to be dismissed for suppression of material facts. Respondents have provided additional incentives of ₹ 98,663/- as timely payment discount and ₹ 1,04,000/- as discount on basic sales price. Clause 5.5 of the agreement provides for delay penalty of ₹ 5 per sq. ft. on total super build up area every month till the date of possession. Delay caused in construction of the unit was beyond control of the respondent. Respondent no. 1 had accepted the booking of the unit in question based on the self-certification policy issued by DTCP, Haryana.

3. On merits, it has been submitted that total consideration of the unit cannot be determined before handing over of possession. The complainants had made all the payments as per the payment plan and construction milestone achieved. It is denied that possession of the unit was to be handed over by 07.01.2015. Complainants at the time of executing independent floor buyer agreement were aware that the possession timeline was dependent on force majeure clause and timely payment of each instalment. It was informed that delay payment interest, if any, will be paid at the time of offer of possession. Construction of the unit is going on in full swing and endeavor is to deliver the possession shortly. It is the global pandemic due to which construction is at halt. As per clause 1.18 read with clause 2.5 of the duly executed agreement, complainants agreed to pay club membership charges. Further as per clause 1.35 of the independent floor buyer agreement complainants agreed to make payment

of taxes including VAT. The respondents have prayed for dismissal of the complaint being non-maintainable. The respondents have also sought relief giving directions to the complainants to pay the amount due but not demanded along with interest.

4. Rejoinder to the written statement was filed by the complainants reiterating the averments made by them in the complaint and controverting the allegations made by the respondents in the written statement.

5. At the time of filing of the present complaint, the complainants had sought relief of delay interest for every month of delay as per Rule 15 of Haryana Real Estate (Regulation and development) Rules, 2017 on the paid amount of ₹ 27,23,603.65/-. Under relief no. 2 the complainants have sought refund of amount of ₹ 15,464/- paid as club membership charges. Under relief no. 3 the complainants have sought refund of amount of ₹ 27,667/- paid as VAT along with interest. Under relief no. 4 they have sought compensation of ₹ 5,00,000/- for financial and mental distress, gross harassment, disconsolateness and agony. Under relief no. 5 they have sought ₹ 70,000/- as litigation charges. Under relief no. 6 they have sought to restrain the respondents from issuing any fresh demands such as holding charges or cancelling the allotment. Complainants have withdrawn relief no. 1 with regard to delay interest vide e-mail dated 05.10.2021.

6. Perusal of the file shows that the complainants had purchased a floor bearing no. OM13-04-SF having tentative super area of 1478 square feet situated

in Park 81, Sector 85, Parklands, Faridabad on 07.07.2011. Till June 2013, the complainants had made majority of payment except the payment of VAT against the basic sale price of ₹ 28,46,015/- (₹29,50,015- ₹1,04,000). The possession was to be delivered till January 2015. Since the respondents have failed to offer possession, the complainants had instituted this complaint on 14.02.2021. Complainants are also seeking refund of club membership charges as the club has not come into existence and refund of VAT charges. The respondents have not offered possession either at the time of filing of present complaint or during the pendency of the complaint.

7. As per record, an amount of ₹26,95,936.65/- was paid by the complainants till 03.06.2013 and an amount of ₹ 27,667/- for VAT was paid on 11.11.2016. The possession was to be delivered till 07.01.2015. It is apparent on the record that neither possession was delivered by the respondent to the complainants nor delay compensation has been paid. The amount of ₹27,23,603.65/- { $\text{₹}26,95,936.65 + \text{₹}27,667$ (VAT)} was being utilized by the respondents till 18.01.2022 i.e., date of passing this judgement.

Section 71 (3) of the RERA Act reads as:

“While holding an inquiry the Adjudicating Officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the Adjudicating Officer, may be useful

for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such **compensation or interest**, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.”

While adjudging compensation to be paid to the complainant, factors enumerated in section 72 of the RERA Act are to be taken into consideration, which is reproduced as :

“While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.”

8. The amount of ₹27,23,603.65/- was being used by the respondents till 18.01.2022. For all these 7 long years, the respondents had been utilising the amount of ₹27,23,603.65/- paid by the complainants which can be termed as

disproportionate gain to the respondents and loss to the complainants which can be further termed as a result of continuous default committed by the respondents. It would be in the interest of justice if the compensation to be paid to the complainants is determined after taking into account the default from 07.01.2015 to 18.01.2022 i.e., 7 years and eleven days. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6% per annum. In 2020 SCC online SC 667 titled as Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and others vs DLF Southern Pvt.Ltd., it has been observed by Hon'ble Apex Court in Para no.55 that :

the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective apartments with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of occupation certificate.

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹26,95,936.65/-	07.01.2015 to 18.01.2022	6 %	11,37,612/-
₹27,667/-	11.11.2016 to 18.01.2022	6 %	8,614/-
Total			11,46,226/-

9. Thus, the total amount of compensation under the head mental agony and harassment comes to ₹11,46,226/-. Under relief no. 5.4 the complainants have sought compensation to the extent of ₹5,00,000/- for financial and mental distress, harassment disconsolateness and agony. Since the complainants have prayed ₹5,00,000/- as compensation on account of mental agony and harassment, amount more than ₹5,00,000/- cannot be granted to the complainants under this head. Hence, the relief of compensation under the head mental agony and harassment is limited to ₹5,00,000/- only.

10. So far as relief no.1 is concerned, its stands withdrawn by the complainants themselves. Under relief no. 2 and 3 the complainants have sought refund of club charges and VAT charges, the complainants are at liberty to claim these reliefs from Hon'ble Authority. Under relief no.5, ₹ 25,000/- are allowed as litigation charges. Under relief no.6, the complainants have sought to restrain the respondents from charging holding charges/delay interest or cancelling allotment, for which also the complainants have to approach Hon'ble Authority.

11. Sequel to aforesaid discussion, this complaint is partly allowed. Respondents are directed to pay an amount of (₹ 5,00,000 + ₹ 25,000) = ₹ 5,25,000/- (Rupees five lakhs and twenty-five thousand only) to the complainants in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of the amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

12. In these terms, the present complaint stands disposed of. File be consigned to record room after uploading order on the website of the Authority.

18.01.2022

Sarita Gupta
Dr. Sarita Gupta
[Adjudicating Officer]

Note: This judgement contains 11 pages. All the pages have been checked and signed by me.

Sarita Gupta
Dr. Sarita Gupta
[Adjudicating Officer]

