HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1221 OF 2021

Ajay Kumar Bahri and Bharti Bahri ....COMPLAINANTS(S)

VERSUS

BPTP Ltd and BPMS P Ltd. ....RESPONDENT(S)

CORAM: Rajan Gupta **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 01.06.2022

Hearing: 3rd

Present: Shri Kanhaiya Prabhakar, Ld. counsel for the Complainant through VC.

Shri Hemant Saini and Shri Himanshu Monga, Ld. counsels for the Respondent.

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. While perusing case file it is observed that complainants were allotted a unit no. V11-11-FF, having super area of 1402 sq. ft. in respondent's project Park-81, Parklands Faridabad on 16.03.2010. Builder Buyer Agreement (BBA) was executed between the parties on 11.04.2012 and in terms of clause

5.1 of the said agreement, possession was to be delivered within 42 months from the date of sanction of building plans or execution of flat buyer agreement whichever is later. Complainants have already paid an amount of Rs. 41,35,370.7/- against basic sale price of Rs.30,74,012 /-. The fact of basic sale price of Rs.30,74,012 is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure P-5 to the complaint. In support of payment of said amount of Rs. 41,34,930.7/-, the complainant has annexed receipts of payments with the complaint.

2. Possession of the booked apartment was offered to the complainants on 22.07.2020 but complainants did not accept said offer of possession on the ground that offer was made without obtaining occupation certificate of the building from authorities concerned of the State Government.
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Complainants has impugned additional demand of Rs. 50,000/- on account of club alleging that no club is constructed in the project till date; demand of GST even when delay is on part of respondent only. It is alleged that had respondent delivered possession in time, burden of GST would not have been fallen on the complainants. Besides, demand on account of electrification infrastructure charges has been impugned stating that no such facility is present in the said project. Complainants have also stated that stamp duty has already been taken from the complainants.

3. Feeling aggrieved, present complaint has been filed by the complainants seeking direction against respondent for delivery of possession of his unit after obtaining occupation certificate and registration of conveyance deeds; restraining respondent from executing indemnity cum undertaking; payment of delay interest as per Rule 15; direction to respondent to construct club and bear burden of GST apart from quashing maintenance charges.

4. Respondent has filed his reply while submitting following facts/pleadings:

(i) Possession has already been offered to the complainants on 22.07.2020. After said offer, respondent vide e-mail dated 07.08.2020 also offered a discount of Rs. 2.93,533/- by asking complainants to pay Rs. 6,00,000/- as full and final amount. Complainants accepted said offer on 08.08.2020 and stated that they would not demand any delay compensation or refund from the respondents in view of the settlement. Respondent also issued NOC fit out on 03.10.2021.

(ii) With respect to construction of club, it is stated that respondent had already constructed a make shift club within the unit of the project so club charges are justifiable.

(iii) Electrification charges were mentioned in the agreement. It was agreed that cost of sub-main wiring from the meter box along with centralized three phase prepaid metering system would be borne by the complainants. Electrification and STP has been calculated @ 895/- per sq. yd. for each floor proportionately.

(iv) As per clause 1.35 of the agreement, complainant had agreed to pay statutory taxes including GST.

(v) As per clause 1.24 respondents are rightfully entitled to maintenance charges.

5. Ld. counsel for the complainant reiterated his pleadings and facts of the case as narrated in para 1 and 2 and demanded relief as stated in para 3 of this order.

6. Ld. counsel for the respondent reiterated his submissions stated in para 4(i) of this order. Besides, he drew attention of the Authority towards an e-mail dated 08.08.2020 annexed at page 126 of the reply. He submitted that vide this letter, complainants agreed to pay an amount of Rs. 6,00,000/- to the respondent and also agreed to pay maintenance charges, stamp duty charges, Registration charges etc. Complainant also agreed that he would not demand any delay compensation above agreed discount. Now complainants are not adhering to the settlement already taken place between the parties and have filed present complaint. Further, NOC for fit outs has been given by respondent on 03.10.2020.

7. Ld. counsel for the complainants also argued with reference to argument put forth by ld. counsel for the respondent that letter dated 08.08.2020 also specifies that unit is to be handed over within four months of settlement offered by the respondent dated 07.08.2020 whereas unit is still not complete what to talk of handing over till date. Settlement dated 07.08.2020 has no meaning in view of above facts. Unit is incomplete and same may be verified by appointing a local commissioner.

8. After going through written submissions and consideration of arguments of both the parties, Authority is of the view that natter has already been settled via the emails dated 07.08.2020 and 08.08.2020 between the parties, but that settlement was subject to an important condition of handing over possession within 4 months. Possession has not been actually handed over to the complainants even today as complainants averred that construction is not complete whereas respondent claims that construction is complete.

To be fair and without any prejudice, Authority decides to appoint a local commissioner for inspection of complainant's unit to verify whether construction of complainants' unit stands complete in all aspects. Local commissioner will inform the date and time of his visit to both the parties to enable them to be present at the time of inspection. Cost of local commissioner will be borne by the party who will be at default in local commissioner's findings.

9. Case is adjourned to **04.08.2022**.

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RAJAN GUPTA
(CHAIRMAN)

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DILBAG SINGH SIHAG
(MEMBER)