



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1329 OF 2023

Balraj Kumar Marjara and Saroj Bala Marjara

....COMPLAINANTS

VERSUS

1. BPTP Limited.

2. Country Wide Promoter Pvt. Ltd.

....RESPONDENTS

CORAM: Dr. Geeta Rathee Singh
Chander Shekhar

Member
Member

Date of Hearing: 07.05.2024

Hearing: 4th hearing

Present: - Sh. Arjun Kundra, counsel for complainants

Sh. Hemant Saini, counsel for respondents

ORDER :

1. Learned counsel for complainant stated that complainants were allotted shop bearing no. U-26, admeasuring 558 sq.ft vide allotment letter dated 15.03.2012 in respondents project namely, "Park Central, Sector 85, Faridabad" by respondent-promoter. As per booking complainant paid instalments as and when demanded by respondent and in total complainant had paid an amount of ₹ 34,57,756.31/-. Space buyer agreement was signed between parties on 27.11.2012 and as per clause 1.4 respondent was under an obligation to handover possession latest by 27.11.2015. However, respondent had failed to do the same as per time stipulated in the said space buyer agreement. After failing its obligation to deliver the shop respondent cunningly convinced the complainants to transfer unit in another project of respondent i.e. "Park Elite Floors", Faridabad assuring that same is near completion and possession will be handed over by 30.03.2019. Further, transfer of unit was confirmed by respondent promoter vide latter dated 20.01.2016. Vide new allotment letter dated 04.03.2016, unit in question was allotted to complainant i.e. Unit no. E40-62-FF, admeasuring 1625 sq.ft for total consideration of ₹ 50,00,205/-. As per allotment letter, payment plan given by respondent was 30:70 ratios i.e. complainants have to pay 30% of the sale consideration initially and balance at time of possession. Later fresh builder buyer agreement was executed between parties on 30.03.2016, as per clause 6.1



of agreement possession was to be handed over by March 2019. However, respondent again failed to handover possession of the unit in question. Complainant stated that by year 2016 i.e. before execution of second builder buyer agreement he had paid huge amount of ₹ 40,07,756.31/- to respondent by year 2016. Complainants further stated that there is no outstanding amount on part of complainant as of today, nevertheless, legal possession of unit in question has not been offered to the complainants till date. Further, complainants have communicated to respondent since year 2020 seeking redressal of their grievances but to no avail. Complainant had contended that the alleged offer of possession dated 02.05.2023 was illegal and arbitrary for following reasons:-

- i. It was not accompanied with occupation certificate.
- ii. No provision for compensation mentioned for delay caused in handing over of possession.
- iii. Said offer of possession was accompanied with unilateral draft undertakings and indemnity letters.
- iv. On visit of site, it looks project is far from completion.

Since complainants paid all amounts on time, it is respondent who had failed to handover possession as per time stipulated in builder buyer agreement. Now, after delay of more than eight years, complainants are left with no other option but to approach this Authority. Hence the present complaint has been filed for seeking relief of handing over

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possession of booked floor after due completion and receipt of occupation certificate along with delay interest as prescribed as per RERA Act, on the already paid amounts by complainants from the deemed date of possession i.e. 02.03.2014 till the actual physical delivery of possession and execution of conveyance deed.

2. Sh. Hemant Saini, counsel for respondents stated that in compliance of last order dated 31.01.2024, copy of board resolution and letter of Authority passed by both respondents was filed on 22.04.2022 in registry. He further encapsulated his arguments in following points:

- i. Respondent counsel stated that occupation certificate for unit in question was received on 18.08.2023 but possession of unit was offered to complainant on 02.05.2023 i.e. three months prior of grant of occupation certificate, thus the offer of possession was a valid offer of possession.
- ii. Further, respondent counsel stated that both parties are bound by the terms of agreement. if complainant is relying upon clause of agreement for making a case for delay of handing over of possession than respondent had also certain clause which bound the complainants to be abide by terms of agreement only. To further relied upon a judgment passed by Hon'ble Apex Court in case of Bharathi Knitting Company

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vs Dhl Worldwide Express Courier year 1996 which provides for enforcement of agreement in totality.

iii. Lastly he challenged the sanity of agreement executed between parties as said agreement is signed in english by complainants voluntarily and in full knowledge.

3. After hearing both parties, Authority asked respondent counsel to refer to the letter vide which complainant has requested for change in unit and to show the copy of occupation certificate annexed with the file. Respondent counsel referred to page 60 of complaint and page 41 of reply, wherein confirmation of change of unit allotted was annexed. Perusal of said letter reveals that it is a confirmation to the alternative plot and not the letter written by complainant for change of unit. This letter simply implies that change in unit was given as an option by respondent and not a request made by complainant although reason for offering alternative plot has not been placed before Authority. Secondly, respondent counsel referred to page no. 94 of reply for copy of occupation certificate. Bare perusal of said page shows that respondent had not annexed the copy of occupation certificate issued by concerned department rather has annexed a copy of letter issued by Ar. Rajni Lakhani stating the fact that occupation certificate is granted to respondent.

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4. Authority direct respondent to place on record copy of occupation certificate directly issued by competent authority within two weeks with advance copy supplied to opposite party.
5. Case is adjourned to **27.08.2024** for further arguments.



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DR. GEETA RATHEE SINGH
[MEMBER]



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CHANDER SHEKHAR
[MEMBER]