Haryana Real Estate Regulatory Authority
Panchkula
सत्यमेव जयते

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2087 OF 2023

Nitika Jain and Anr. ....COMPLAINANT(S)

VERSUS

1. M/s BPTP Limited.
2. Country Wide Promoters Pvt. Ltd.
3. BPTP Parklands Pride Ltd. ....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
Chander Shekhar **Member**

Date of Hearing: 21.05.2024

Hearing: 3rd

Present: - Sh. Akshat Mittal, counsel for complainants

Sh. Hemant Saini, counsel for respondents

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ORDER:

1. Learned counsel for complainants stated that complainants had booked a unit bearing no. H2-33-GF admeasuring 1418 sq.ft by paying an amount of ₹ 3,00,000/- in the project of the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in the year 2009. Builder buyer agreement was executed between parties on 31.05.2010 and as per clause 4.1 of agreement respondent was under an obligation to handover possession within 24 months from date of sanctioning of building plan. Further, said clause was amended by addendum dated 31.05.2010 to floor buyer agreement, whereby clause 2 provides that "above stated clause 4.1 is modified and shall be read as handing over possession of floor within a period of 24 months from date of execution of floor buyer agreement or on completion of payment of 35% of basic sale price along with 20% of EDC and IDC whichever is later". Counsel for complainants alleged that as per agreement possession of unit in question should have been delivered by 30.05.2012. Till then complainants had already paid an amount of ₹ 5,87,144.2/- to respondent-promoter.

2. Further, counsel for complainant referred to a judgment passed by **Hon'ble Apex Court in 2018 STPL 4215 SC tiltled as M/s Fortune Infrastructure & Anr**, whereby 3 years has been taken to be a reasonable time to handover possession to the allottee. In that case, also

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respondent was bound to offer possession to complainant by 3 years from booking (18.05.2009) i.e. latest by 17.05.2012. Furthermore, counsel for complainant referred to para x. at page no. 9 of complaint, wherein communications made by complaint for delay in delivery of posession dated 04.12.2010, 24.04.2011,27.05.2012 etc are annexed.

3. Counsel for complainant stated that rather than offering possession of booked unit, respondent surprisingly issued a letter dated 31.05.2012 for re-allotment of unit for the reasons beyond their control. Now, respondent had allotted unit no. PE.122-GF measuring 1510 sq.ft. to complainant without any justification. Re-allotment was protested by complainant and consent letter given by complainant was also given under protest on 13.06.2012. Complainant even wrote another letter to respondent dated 25.06.2012 to make new agreement effective from original agreement and thus requested to keep the dates same. Since possession was already delayed, complainant wrote another letter dated 26.06.2012 seeking delay charges and compensation from respondent. After almost three year respondent signed new agreement on 17.04.2013 qua reallotted unit no. PE- 122-GF measuring 1510 sq.ft. The said agreement was also signed under protest as certain clause were arbitrary on part of respondent and same was communicated to respondent by complainant vide letter dated 18.03.2013. As per clause 5.1 of new agreement, deemed date of possession was 16.04.2015 i.e within 24 months from execution of

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builder buyer agreement or sanctioning of building plans which ever is later. Complainants had paid an amount of ₹ 28,65,914/- to respondent by year 2017.

4. Learned counsel for complainants further stated that respondent had demanded illegally and arbitrary following charges from complainant:

i. Demand of Value Added Tax (VAT):- respondent raised demand vide letter dated 09.11.2016 on account of VAT and stated it to be paid by 25.11.2016. In this respect, counsel for complainant stated that firstly, VAT would not be applicable since same were nt applicable at the deemed date of possession and were only introduced in year 2014. in resent case, first unit was booked by year 20029 and by 2012 possession was to be handed over but due to failure on part of respondent in making timely construction of unit, complainants was forced to take re-allotment of another unit. Furthermore, it is stated that once complainants had paid the service tax, respondent cannot demand additional tax on pretext of VAT it will rather amount to dual taxation which is illegal on part of respondent –promoter. Complainant had protested regarding the same vide communication dated 20.12.2016, 01.01.2017, 14.01.2017.

ii. GST charges:- in furtherance to preceding para, GST is also not applicable , since same had come into picture subsequently i.e. after deemed date of possession i.e. 30.05.2012.

iii. Cost escalation:- respondent had increased the cost of construction, same was also contested by complainant vide email dated 11.08.2017

5. Further, counsel for complainants stated that after delay of almost 8 years from booking, complainants after losing all hope of getting their home even had requested respondent to either refund their paid amount and seeking compensation for delay vide communications dated 24.07.2017 and 23.05.2023 but all in vain, respondent till date neither handed over possession no refunded the paid amount to the complainants. Further it is mentioned that respondent on 15.07.2023 had sent two emails to complainant. In first email they offered 3 alternatives options to complainants including refund with 9% simple interest, option to sign an amended builder buyer agreement and on the same date another email mentioned the earlier mail to be ignored. To clarify the actual position, complainants went to office of respondent in New Delhi on 16.08.2023, where respondent shared statement of account of receivables and payable (herein after referred as SOA) with complainants. In said SOA, respondent had imposed illegal demands such as:- ₹ 50,000/- on account of club charges, when there is no club in the project in question. Further,

demand on account of enhanced EDC and interest thereto amounting to ₹ 24,15,640/- which is already declared in many other cases to be void as same is not allowed to be charged. Unilateral increase in basic sale price at incremental rates- in present case earlier booked unit in year 2009 was of 1418 sq.ft and realloted unit was increased to 1510 sq.ft. meaning thereby, increase of 92 sq.ft was unilaterally done by respondent and respondent is charging for said area at the rate of 2425/- per sq.ft, whereas original area was charged by respondent for 1802.54/- sq.ft. Further respondent raised illegal demand for IDC, STP and electrification charges, which are already part of EDC charges.

6. After the above stated physical meeting held on 16.08.2023, respondent sent another email dated 17.08.2023 with a proposal to offer alternate options or refund @ 6%. To this email, complainants showed their non-acceptance vide email dated 30.08.2023. On 07.09.2023 respondent issued another email and stated that as complainants had not opted for any options given. To avoid paying further delay compensation company pursue the option for refund with interest. Vide letter dated 08.09.2023, complainant replied to respondent for seeking possession booked unit with interest only. Since, respondent till date had not handed over possession to complainants left with no other option complainants had filed the present complaint seeking possession of booked unit i.e. PE-122-

GF along with delay interest as prescribed under RERA Act 2016 along with quashing of all illegal demands raised by respondent.

7. Learned counsel Sh. Hemant Saini, appeared for respondents and stated that occupation certificate for booked floor by complainants has not been obtained by respondent till date, therefore, respondents are not in position to immediately handover possession accompanied by an occupation certificate. However, learned counsel for respondents offered the complainants to take alternative unit having occupation certificate or to take refund of the amounts paid by them to respondents as per Section 18 of RERA Act.

8. Sh. Akshat Mittal, counsel for complainants vehemently denied to accept both the offers made by counsel for respondents and stated that complainants only seeks possession of unit no. H2-33-GF allotted to him along with delay interest to be awarded by Authority from deemed date of possession i.e. 30.05.2012 calculated from date of original agreement till date of legal offer of possession i.e. after obtaining occupation certificate.

9. Sh. Hemant Saini, counsel for respondents stated that if complainant is only willing to stick by the relief sought by them in the captioned complaint, then there are two payments amounting to ₹ 1,15,020/- as inaugural discount and ₹ 84,904/- which were accounted or adjusted in the accounts of complainants by respondent as a good will gesture for making timely payments to respondent. He stated that the said two

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amounts are included in the amounts paid by complainants and reflected in the account of complainants though same were never actually paid by them. Therefore, while taking into consideration total amounts paid by complainants for the purpose of making calculation for delay interest, these two mentioned amounts be deducted from total paid amounts by complainants. Further, he submitted that force majure factors such as Covid-19 be considered as zero period for the purpose of calculation of delay possession interest.

10. Learned counsel for respondents stated brief facts that in present complaint complainants were earlier allotted unit no.H2-33-Gf vide allotment letter dated 24.12.2009, however with the consent of complainants, they were re-allotted unit no. PE-122-GF- 1510 sq.ft. vide consent letter dated 29.05.2012. Thereafter mutually, willingly and voluntarily parties entered into builder buyer agreement dated 17.04.2013, as per said agreement, possession was to be handed over with 24 months from date of execution of bba or date of sanctioning of building plan, whichever is later along with grace period of 180 days. He relied upon judgment passed by Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in **appeal no. 122 of 2022 titled as Emaar Mgf Land Ltd Vs. Laddi Paramjit Singh**, which states that if grace period is mentioned in the clause, the benefit of the same be given. In present case deemed date of possession has yet not be arrived as building plans were

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sanctioned on 02.01.2024, so deemed date of possession comes to 02.07.2026. In light of this, due date has yet not arrived. In this view, Section 18 cannot be made applicable. Further learned counsel for respondent relied upon Hon'ble Supreme court judgment titled as **Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & Ors.** which states that right of an allottee seeking refund arises only upon non-fulfilment of obligation by the promoter. Since due date has not arrived in present case and respondent had not failed to perform any obligation present compliant is premature and liable to be dismissed.

11. Learned counsel for respondent further encapsulated his arguments in following points:

   i. Respondent counsel stated that occupation certificate for unit in question has yet not been received by respondent, however complainants are willing to wait for the same. For computing the delay period, deemed date of possession be taken as per agreement dated 17.04.2013. Since complainants nowhere in their relief clause had challenged the authenticity of new builder buyer agreement. He further stated that in case, first agreement is taken into consideration for computation of deemed date of possession, then what will remain the santity of agreement executed between parties as agreement dated 17.04.2013 is signed in english by complainants voluntarily and in full knowledge.

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

12. Arguments of both the parties have been heard at length. Case is adjourned to **10.09.2024** for pronouncement of order.

CHANDER SHEKHAR
[MEMBER]

DR. GEETA RATHEE SINGH
[MEMBER]