



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 237 OF 2022

Shaurya Kaul

....COMPLAINANT

VERSUS

M/s BPTP Ltd.

....RESPONDENT

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

**Member
Member**

Date of Hearing: 07.01.2025

Hearing: 12th

**Present: - Sh. Nitin Kant Setia, Learned counsel for complainant through VC
Sh. Tejeshwar Singh, Learned counsel for respondent through VC**

Geeta Rathee

ORDER:

1. Sh. Nitin Kant Setia, learned counsel for complainant stated that his submissions stands recorded in order dated 26.04.2023. Relevant portion of the same has been reproduced below:

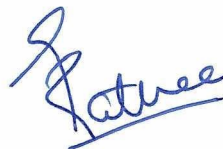
"Ld. counsel for complainant submitted that original allottee Mr. Pushpraj booked unit in project- Park Elite floors of respondent by paying booking amount of Rs 2.5 lakhs on 18.06.2009. Unit no. H-401 SF having area of 1022 sq ft was allotted to her on 24.12.2009. Complainant's mother Ms. Rekha Kaul had purchased allotment rights of unit in question in year 2011 and rights were further transferred to complainant on attaining majority on 03.03.2017. It has been argued that builder buyer agreement dated 19.06.2021 was executed by the respondent whereas the fact remains that respondent was demanding/raising money between year 2009 to 2021 and complainant had honoured those demand letters within stipulated time. As per provisions of RERA Act, 2016 the builder cannot take money without executing agreement. Further it is the mischief on part of respondent that he delayed the execution of BBA and, therefore, said BBA has to be ignored being unfair trade practice on part of respondent. He further stated that deemed date of possession has to be counted w.e.f date of allotment of unit in question as from that day onwards both the parties were having meeting of minds and there was no need of any written agreement.

2. In rebuttal, Ld. counsel for respondent stated that complainant had signed the BBA in year 2021 without any protest and, said agreement is a specially customised to the liking of present allottee as normally there is time of 3 years for delivery of possession but herein the deemed date of possession clause provides time of 60 days from the date of payment of total sale consideration alongwith 30 days of grace period. Further he stated that there is proper process of allotment and execution of BBA being followed by respondent. In this case the original allottee had applied for unit vide his application form dated 25.05.2009 and thereafter allotment letter of unit was issued on 24.12.2009. It is not the case that allotment letter was signed by both parties and then it was issued to complainant, herein the respondent had received money from complainant in lieu of unit so the allotment letter was issued. Thereafter

the complainant paid amount to respondent towards demand letters raised by it and got executed BBA in year 2021 without any demur and protest. Nothing pertaining to execution of BBA or any coercion/undue influence has been mentioned in complaint. Complainant was silent about his rights from year 2009 to 2021 and he has chosen to be so even today in his complaint case also. Further the respondent stated that construction of the unit stands completed and occupation certificate has also been received on 20.07.2022. Here in this it is the complainant who is trying to turn the clock back by agitating upon signing of BBA in 2021 and not coming forward to make payment of outstanding dues for taking delivery of possession."

2. Further, learned counsel for complainant argued that principle of relation back will be applicable in present case from year 2011, since complainant's mother Mrs. Rekha Kaul has purchased the rights of the unit in question in the year 2011 from original allottee. Earlier an agreement was also executed between predecessor allottee Mr. Pushpraj Mahendra and Lajjawati for the unit in question with respondent before transferring of unit in name of Mrs Rekha. Since present complainant, at time of purchase of unit was minor and after turning major only, mother Mrs. Rekha requested respondent to substitute name of complainant vide letter dated 03.02.2017. Respondent accepted the requested on 03.03.2017 and substituted the name of present complainant in place of Mrs. Rekha. Hence, there was no need to sign new agreement. It is a delay tactic on part of respondent since new agreement was executed on 19.06.2021 between present complainant and respondent, which only delays the possession. Further, it is apprised by learned counsel for complainant that possession has already been taken by the complainant.

3. On the other hand, Sh. Tejeshwar Singh, counsel for respondent stated that Mrs. Rekha had purchased the rights of unit in question in year 2011 from original allottees. However, name of present complainant was substituted in year 2017. Respondent counsel stated that irrespective of nature of relationship shared between Mrs. Rekha and present complainant; both the entities are separate legal entity. When one person transfers their right to another it becomes separate contract. Therefore, new agreement was executed with new allottee/present allottee on 19.06.2021 which bear clear signature of present complainant and complainant has never objected to the same till filing of this complaint. Further, respondent counsel referred to clause 14.10 of the said agreement clearly states that "this agreement along with its annexure supersedes any and all undertakings, terms of other agreements, advertisement brochures, whether written oral or written if any between the parties, including the terms of the Application". Furthermore, counsel for respondent apprised the Authority that in present case there is no delay on the part of respondent in handing over possession, since occupation certificate for the unit in question was obtained on 20.07.2022 and offer of possession was issued on 23.06.2023 to the complainant. However, it is the complainant who had not accepted possession of the unit on time.
4. In rebuttal, learned counsel for complainant stated that transfer of unit from Mrs. Rekha to present complainant was only substitution of the



name, which can be clarified at page no. 57 of the complaint book, hence there was no need to execute any new builder buyer agreement. Further, at page 59 of complaint book, a letter is annexed which is issued by respondent wherein name is substituted from Mrs. Rekha to present complainant. Since present complainant attained majority in year 2017, present complainant had stepped into shoes of original allottee. Further, complainant counsel has annexed at page no. 36 of complaint book i.e. demand letter issued by respondent stating therein that handing over of possession will begin from second half of year 2011. Contrary to the same, demand letter annexed at page 70 of reply states that they had reached at stage of "completion of brick work".

5. After hearing both parties and going through documents, it has come to the notice of Authority that there are certain documents which are not available on record and same are necessary for better adjudication of the case, therefore complainant is directed to file the same in registry within three weeks with advance copy supplied to opposite party. Said documents are listed below:

- i. To determine the rights and liabilities of both parties, neither complainant nor respondent had placed on record agreement executed between original allottee and respondent.
- ii. Further, the endorsement letter annexed at page no. 33-34 of complaint book is undated.



- iii. Complainant neither had complied with regulation 8 dd and ddd of the complaint nor has specified in pleading the total paid amount.
- iv. Lastly, complainant had not annexed any document or communication exchanged between respondent and complainant from year 2011 to year 2021 seeking justification of delay for execution of buyers agreement in year 2021.
6. Accordingly, Authority grants one last opportunity to both parties, to file written communications or objections if any raised between parties, from year 2009- 2021 i.e. till execution of new buyer agreement. Further, complainant is directed to comply with regulation 8 dd and ddd format of complaint and file details of payment made in tabular manner supporting same with receipts or bank statement. Lastly, copy of buyer agreement executed between original allottee be placed on record by both the parties.
7. Case is adjourned to **25.03.2025**.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]