



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2404 OF 2022

Sanjay Sharma

....COMPLAINANT

VERSUS

1. BPTP Limited.

2. Countrywide Promoters Pvt. Limited.

....RESPONDENTS

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

**Member
Member**

Date of Hearing: 03.09.2024

Hearing: 7th

Present: - Sh. Arjun Kundra, counsel for complainant

Adv. Hemant Saini, Learned counsel for respondents

Lathee

ORDER :

1. Learned counsel for complainant stated that complainants had booked an independent floor in the project of the respondent namely "Park Elite Floors" situated at Sector 75-89, Faridabad, Haryana in the year 2009. Vide allotment letter dated 24.12.2009, complainant was allotted unit no. E-24-06, measuring 1203 sq. ft.(enhanced to 1371 sq.ft. at time of offer of possession), in Park Elite Floors, Parklands, Faridabad. Unit was allotted for basic sale price of ₹21,37,003/- out of which complainant had paid an amount of ₹ 24,40,381.03/- to respondent i.e more than the basic sale price. Floor buyer agreement was executed between both the parties on 03.06.2010. As per clause 4.1 of the agreement possession of the unit was to be delivered within a period of twenty four (24) months from the date of sanctioning of building plans. Further, the promoter shall be entitled to a grace period of 180 days after expiry of 24 months for filing and pursuing the grant of occupation certificate from the competent Authority. Accordingly, deemed date of possession comes to 09.09. 2012. However, respondent failed to offer possession within the time period stipulated in the agreement. On 16.08.2018 after six years of delay respondent had offered possession to complainant without obtaining occupation certificate, which is not acceptable to the complainant for the reasons stated at page no. 18 of the complaint book. Complainant had even protested against the offer of possession vide notice dated



22.08.2018 but respondent never replied to the same. Another letter on 31.10.2018 was sent by complainant to respondent stating deficiencies in the unit but again to no avail. To the utter shock, respondent unilaterally cancelled the unit of complainant on 30.08.2022, when complainant had already paid more than the basic sale price to the respondent. Further, from booking of the unit till date, the respondents have never informed the complainant about any force majeure or any other circumstances which were beyond the reasonable control of the respondents and has led to delay in completion and development of the project within the time stipulated. The respondents were bound by terms and conditions of the agreement and deliver possession of the unit within time prescribed in the floor buyers agreement. However, the respondents have miserably failed to complete the project and offer legal possession of the booked unit complete in all aspects.

2. It is submitted that even after a lapse of more than ten years from deemed date of delivery of possession, respondents are not in a position to offer legal possession of the booked unit to the complainant. It is further stated that till date, the respondents have neither provided possession of the flat nor refunded the deposited amount along with interest. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed for seeking relief of handing over 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 till the actual physical delivery of possession.

3. Sh. Hemant Saini, counsel for respondents stated that he has brought along a cheque dated 10.07.2024 for an amount of ₹ 10,05,370/- payable in favour of complainant as amount of refund. He stated that occupation certificate for the unit in question was obtained by respondent on 07.06.2022 and offer of possession was made on 16.08.2018. Unit stands cancelled on 17.08.2019 on account of non-payment. Since unit stands terminated, complainant should accept the amount of refund as part payment. He also stated that present complaint is not maintainable since revised sanctioning of plan was effected on 07.06.2022, therefore complaint is premature.
4. Learned counsel for complainant has refused to take the cheque of ₹ 10,05,370/- given by respondent counsel in court. He stated that offer made by respondent in year 2018 was firstly without occupation certificate which itself makes it an illegal offer of possession, secondly, occupation certificate admittedly was obtained on 07.06.2022 i.e clearly after 4 years of making offer of possession. Hence, same is returned to the counsel for respondent. Counsel for complainant requested to decide the matter on merits.



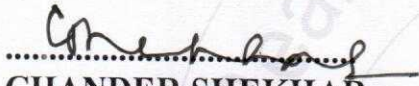
5. Further, learned counsel for respondent Sh. Hemant Saini argued as follow:

- i. Counsel for respondent referred to Model agreement of RERA Act clause 9.3 which states that if allottee defaults in making payment as per plan opted by complainant, respondent is well within his rights to cancel the allotment and refund the paid amount after forfeiting the earnest money.
- ii. Counsel for respondent referred to Section 19(10) of RERA Act, which states that every allottee is under obligation to take physical possession within a period of two months of occupation certificate. But in present case, complainant did not take possession after two months of obtaining occupation certificate.
- iii. Counsel for respondent made reference to judgment passed by Hon'ble Apex Court in case of "Bharathi Knitting Company Vs Dhl Worldwide Express Courier", and stated that agreement executed between parties states certain clause for complainant as well as for respondent. While giving effect to said agreement, Authority may enforce the agreement in totality for both the parties.
- iv. Counsel for respondent submitted that reply for claiming force majeure on different accounts including Covid-19 outbreak for



relaxation be taken into consideration while deciding the matter on merits. He stated that Covid-19 outbreak lead to delay in handing over of possession, thus, the Covid-19 period may be taken as zero period for the purpose of calculation of delay possession interest.

6. Case is adjourned to **11.02.2025** for further arguments and for pronouncement of the order.


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]