



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 338 OF 2019

Hira Lal Jorwal

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member

Member

Date of Hearing: 21.03.2023

Hearing : 34th

Present: Mr. Rohan Gupta, Counsel for the Complainant through VC.
Mr. Hemant Saini, Counsel for the Respondent.

ORDER: (NADIM AKHTAR-MEMBER)

1. This case was heard at length on 21.09.2022 and following order was passed:-

1. While initiating his pleadings Ld. counsel for the complainant submitted that case of the complainant is that he had

booked a unit in respondent's project named 'Park Generation, sector-37, Gurugram, on 10.09.2011 by paying an amount of Rs. 5,00,000/-. He made another payment of Rs. 5,00,000/- towards said unit on 18.06.2012. No construction work was carried out at site till March 2013. After being advised by the respondent, complainant shifted to another project of the respondent namely PARK SENTOSA sector 77, Faridabad. An allotment letter for unit no. C-1002, measuring area of 1646 sq. ft. was issued by the respondents in favor of complainant on 03.06.2013. Builder Buyer Agreement (BBA) was not executed between the parties. Complainant alleges that they have so far paid an amount of Rs. 13,65,117/-. He further alleges that respondent failed to commence construction at site till date of allotment that is in March 2013. Complainant sent a legal notice dated 01.11.2018 seeking refund of the paid amount along with interest.

2. Complainant has prayed for refund of the amount paid by him along with permissible interest on account of inordinate delay in completion of project and no hope of completion in near future.

3. Respondents have sought to defend themselves in broad and general terms without giving specific reply to the averments made by the complainant. Averments made by the respondents in their reply are summarized as follows: -

- i. Present project "Park Sentosa" is a RERA registered project and the registration of the said project is valid till 31.07.2022.
- ii. Respondent admitted the fact that booking of the complainant was transferred from project Park Generations, Gurugram to Park Sentosa, Faridabad on 28.03.2013.
- iii. Complainant has made huge defaults in making payments.
- iv. It has been stated that complainant had only paid booking amount along with transfer charges. He did not make any further payments despite repeated reminders dated 28.06.2013, 29.07.2013, 28.08.2013 followed by final demand letter dated 04.10.2013. Respondent finally terminated the allotment of complainant vide letter dated 21.11.2013.

v. Respondent admits to have been received an amount of Rs. 13,38,216/-. As per his calculations annexed as annexure 14 of reply, no amount from the payment received from the complainant is refundable.

vi. Present complaint being filed after 5 years of termination is barred by limitation and hence not maintainable.

4. After going through written and oral submissions of both the parties, it is observed that allotment of unit no. C-1002, measuring area of 1646 sq. ft. was issued by the respondents in favor of complainant on 03.06.2013. Builder buyer agreement has not been executed between the parties. As per complainant's version he has paid an amount of Rs. 13,65,117/- whereas as per respondent's version amount paid by the complainant is 13,38,216/-. Further respondent has alleged that complainant has made huge defaults in making payments due to which his allotment was terminated on 21.11.2013 after issuing various reminders. Respondent has also taken a plea that complaint is filed after lapse of around 5-6 years of cause of action that is termination dated 21.11.2013. So, present complaint is time barred and liable to be dismissed. In these circumstances, Authority deems appropriate to afford an opportunity to both parties to argue on issue of termination and limitation.

5. Case is adjourned to 17.11.2022 for arguments.

2. Ld. counsel for complainant has argued that cancellation letter dated 21.11.2013 relied upon by respondent is not a valid document as same was never received by complainant nor any documentary evidence/receipt has been placed on record by respondent to prove its delivery upon complainant. He argued that no demand was honored by complainant after year 2013 as construction work was not going on at site.



3. Ld. counsel for respondent argued that present complaint is barred by limitation as complainant's unit was cancelled on 21.11.2013 and present complaint has been filed in year 2020 after lapse of 5-6 years. He further stated that it is the complainant who is at fault by not paying/honouring demand letters raised after year 2013. He further submitted that proof by way of receipt of delivering the termination letter dated 21.11.2013 has already been attached with the evidence of respondent at page 6 of it and complainant has not filed any objection to it.

4. In view of submissions of ld. counsel for complainant and ld. counsel for respondent, Authority observes that both parties have not filed proper documentary evidence to substantiate their respective arguments/ claims. Proof by way of receipts of delivering the termination letter to complainant relied upon by respondent does not clearly provide the delivery status alongwith date and address on which the said letter has been claimed to have been delivered. Regarding issue of limitation, the complainant is directed to prove as what has been transpired between the parties during year 2013-2020 i.e. from date of termination letter to filing of present complaint. Respondent claims to have terminated the allotment of unit but no information has been provided with respect to amount, if any refunded to complainant or not.

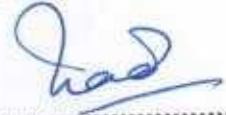


5. Both parties are directed to file documentary evidence in support of their respective claims in registry within next 4 weeks with copy exchanged with each other.

6. Case is adjourned to 31.05.2023 for final arguments.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

