



Complaint no. 954,955,956,957
all of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 954 OF 2021

Pushpinder Singh

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 955 OF 2021

Renu Kohli

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 956 OF 2021

Renu Kohli

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

4. COMPLAINT NO. 957 OF 2021

Swaran Singh

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Geeta Rathee

Date of Hearing: 21.03.2023

Hearing : 13th in all cases

Present: Shri Akshat Mittal, Counsel for the Complainant in all cases.

Shri Hemant Saini, Counsel for the Respondent in all cases.

ORDER: (DR. GEETA RATHEE SINGH-MEMBER)

1. All of captioned complaints were heard at length on 17.08.2022 and following order was passed:-

1. Captioned complaints are more or less identical and relate to same project of the respondent. Complaint no. 954 of 2021 is taken as lead case.
2. Brief facts as averred by complainant are
 - i) The complainant booked a plot in the respondent's project Parklands Pride on 16.02.2006 by paying Rs. 6,75,000/-. He was allotted a plot bearing no. X13-06 having area of 302 square yards in the said project on 11.05.2007. Builder buyer agreement was not executed between the parties. Complainant had paid an amount of Rs. 27,77,336/- against the basic sales price of Rs. 26,50,000/-. In support of paid amount complainant has annexed statement of accounts dated 12.08.2013 which is annexed at page 30 of complaint.
 - ii) Further, as per submissions of complainant, respondents offered him possession of the booked plot on 09.10.2017 with an additional demand of Rs. 21,10,612/-. Complainant alleges that he did not accept the said offer of possession given by respondent for the reasons of wrongful additional demand of Rs. 21,10,612/- made by the respondents; and that the offer was without obtaining completion certificate from authorities concerned of the State Government. Complainant has impugned additional demands made on account of various components like EEDC, IDC, STP, ESS (Electric sub-station), Electrification and STP charges.
 - iii) Complainant has also referred to a termination letter dated 15.06.2015 annexed as annexure C-4 with the complaint stating that respondent had acted in an

Dr. Geeta Rathee

arbitrary and non-transparent manner by issuing alleged cancellation letter.

iv) Present complaint has been filed by the complainant seeking possession of his plot after obtaining completion certificate along with delay interest and for placing on record statement of accounts and quashing of termination letter dated 15.06.2015.

3. Respondent in his written reply has made following submissions:

(i) Respondent in his reply has admitted booking by complainant, and allotment of plot, and non-execution of builder buyer agreement.

(ii) Respondent has challenged the jurisdiction of this Authority to deal this complaint on the ground that part completion was received by the respondent on 09.09.2010 annexed as R-4 to the reply. In support of the averment that this complaint is not maintainable before this Authority he quoted judgement passed in Newtech Promoters & Developers Vs State of Uttar Pradesh in Civil Appeal no. 6745/679 of 2021 by Hon'ble Supreme Court. As per para 54 of judgement, application of RERA Act is retroactive in nature and the projects which are completed or where completion certificate has already been granted does not fall under its purview, therefore, present complaint is exempted from adjudicatory process of this Authority.

(iii) After completing development work of the project, possession of the plot was offered on 01.07.2009 along with additional demand of Rs. 7,35,934/- which is annexed as annexure R-3. Thereafter respondent sent a letter dated 27.02.2012 for execution of conveyance deed after payment of outstanding amount of Rs. 11,76,700/-, which is annexed as annexure R-5. Further it is stated that due to non-payment of outstanding dues by complainant, respondent had issued termination/cancellation letter dated 15.06.2015, however, post issuance of said letter respondent being customer centric company gave last and final opportunity to

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complainant to clear all outstanding dues vide letter dated 09.10.2017 in which total outstanding amount was reflected as 21,10,612/- following which reminder letter dated 27.12.2017 was issued in which total dues were reflected as 22,65,612/-. Respondent thus argues that it is the complainant who is at fault and not the respondent.

4. Authority has gone through written submissions made by both the parties as well as have carefully examined their oral arguments. It observes and orders as follows: -

i) In regard to the argument of ld. counsel for the respondent with respect to jurisdiction of the Authority in deciding these complaints, this Authority has already laid down principles in complaint no. 191 of 2020 titled as Mrs Rajni and Mr. Ranbir Singh v/s Parsavnath Developers Ltd with respect to registered and unregistered projects. The view expressed by the Authority in the aforementioned complaint remains applicable to these cases also.

ii) Admittedly plot buyer agreement has not been executed between the parties. An allotment letter was issued by respondent on 11.05.2007, following which an amount of Rs. 27,77,336/- was paid by the complainant as is evident from statement of accounts dated 12.08.2013 issued by the respondent. It is pertinent to mention here that none of the parties have submitted any reason for non-execution of plot buyer agreement. In these circumstances Authority observes that it would be fair and just that deemed date of possession should be reckoned as three years from the date of issuance of allotment letter. Therefore, deemed date of possession in this case works out to be 11.05.2010. i.e., 3 years after 11.05.2007. Accordingly, delay interest payable to the complainant shall be calculated from this date.

iii) Next issue which require adjudication is offer of possession. Complainant's version is that respondent had offered him possession on 09.10.2017 along with additional demand of Rs. 21,10,612/-. Said letter was followed with a reminder letter dated 27.12.2017 wherein total due



amount was shown as Rs. 22,65,612/-. Complainant states that said offer of possession in the year 2017 was not accepted by him on account of hefty and unreasonable demand and non-receipt of completion certificate. On the other hand, respondent is relying on offer of possession dated 01.07.2009 along with demand of Rs. 7,35,934/- which is annexed as annexure R-3 with the reply. In furtherance of said offer another letter dated 27.02.2012 was sent by respondent to complainant for execution of conveyance deed on payment of outstanding amount. Thereafter, respondent issued termination letter dated 15.06.2015 to the complainant on account of non-payment. Post issuance of said letter respondent gave last and final opportunity to complainant to clear all outstanding dues vide letter dated 09.10.2017 in which total outstanding amount was reflected as 21,10,612/- following which reminder letter dated 27.12.2017 was issued in which total dues were reflected as 22,65,612/-. On perusal of relevant record, the Authority observes that complainant has prayed for possession of unit along with interest and for quashing the termination letter dated 15.06.2015. Said letter was basically a final opportunity letter issued to the complainant for making payment of outstanding amount although respondent himself acted in contravention of termination letter by issuing final opportunity letter dated 09.10.2017 so said termination letter has no meaning in the eyes of law.

(iv) Complainant in support of his claim is relying upon offer of possession dated 09.10.2017 whereas respondent is relying upon offer of possession dated 01.07.2009 along with letters dated 27.02.2012 (for execution of conveyance deed), letter of termination dated 15.06.2015, letter dated 09.10.2017 (offer of possession-pending documents/outstanding) and final reminder letter dated 27.12.2017. On perusal of captioned documents, it is found that complainant had duly received the letter dated 27.02.2012 which was sent for the purpose of execution of conveyance deed after making payment of outstanding dues by


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complainant however letter dated 01.07.2009 which was the original offer as claimed by respondent is denied to have been received by the complainant. On comparison of these two letters, it is found that letter dated 01.07.2009 was sent to complainant on the address of Utopian remedies Pvt. Ltd., Plot no-15 A, NIT, Industrial Area, Faridabad, 121001 whereas letter dated 27.02.2012 was sent on the address A 668, Sarita Vihar, New Delhi. On perusal of other relevant documents such like allotment letter dated 11.05.2007, termination letter dated 15.06.2015, final opportunity letter dated 09.10.2017 and several other letters copy of which has been placed on record by complainant on 02.08.2022. In the form of additional documents, said reminder letters dated 30.05.2012, 22.01.2013, 25.03.2013, 12.08.2013, 21.01.2014 and 12.03.2015, it is revealed that all relevant communications/letters were sent by respondent on the address A 668, Sarita Vihar, New Delhi so it is presumed that offer of possession letter dated 01.07.2009 was not received by the complainant as it was sent on a different address by the respondent. Now fact remains that complainant had received all the letters and reminders which were sent on the correct address that is A 668, Sarita Vihar, New Delhi. Communication in respect of offer of possession and payment of outstanding dues initiated between the parties with effect from letter dated 27.02.2012 till reminder to final opportunity letter dated 27.12.2017. Therefore, it is concluded that both parties were in contact from the year 2012 to 2017. Meanwhile outstanding amount which was initially 7,35,934/- on 01.07.2009 kept on increasing due to levy of interest and holding charges etc. and it finally become Rs. 22,65,612/-. Now important question arises herein is that as to which date/letter be taken as the valid offer of possession considering the fact that part completion had already been obtained by the respondent on 09.09.2010, and what was justification with complainant for not making payment despite receiving several reminders and letters. Respondent is also obligated to answer on the question that as to

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what is the justification for increasing the demand from 7,35,934/- on 01.07.2009 to 22,65,612 on 27.12.2017. It is noted here that respondent may have charged some interest on the outstanding due which was originally Rs. 7,35,934/-, if so respondent has to provide justification for charging interest and other charges along with breakup of amount due towards total sales consideration and interest component.

5. Both parties to argue on the issue of date to be taken as valid offer of possession and outstanding dues on part of complainant. Complainant will submit receipts, if any failing which delay interest will be calculated on the basis of available record.

6. Cases are adjourned to 27.10.2022."

2. Ld. counsel for respondent submitted that offer of possession dated 01.07.2009 alongwith demand of Rs 7,35,934/- + stamp duty and registration fee of Rs 1,69,950/- annexed as Annexure R-3 with the written statement was duly received by complainant. In support he has referred to Proforma-B of complaint and page 41 of additional documents filed by complainant himself where the address of complainant is same as in offer of possession dated 01.07.2009 (*Utopian remedies Pvt. Ltd., Plot no-15 A, NIT, Industrial Area, Faridabad, 121001*). So, it is not the case that complainant was not in receipt of said offer of possession because the complainant himself accepts the mailing address as *Utopian remedies Pvt. Ltd., Plot no-15 A, NIT, Industrial Area, Faridabad, 121001* on which the alleged offer of possession was sent. He argued that complainant has intentionally not accepted said offer of possession by not making payment of outstanding

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amount. Further, it has been stated that complainant himself accepted the receipt of letter/request dated 27.02.2012 issued for execution of conveyance deed alongwith demand of Rs 11,76,600/- + stamp duty and registration fee of Rs 1,94,400/- but complainant still did not come forward to make payment and to accept possession. It is the complainant who has not fulfilled his obligations. Vide order dated 17.08.2022 it was observed by the Authority that parties were in contact from year 2012 to 2017 whereas the communications were going on from year 2009 itself i.e. from receipt of offer of possession dated 01.07.2009.

3. Ld. counsel further argued that by virtue of para 54 of judgement dated 11.11.2021 passed by Hon'ble Supreme Court in Civil Appeal no. 6745-6749 of 2021 titled as M/s Newtech Promoters & Developers Pvt Ltd vs State of U.P and Ors, present complaint does not fall within purview of RERA Act,2016 and therefore liable to be dismissed for want of jurisdiction. He submitted that detailed written submissions of respondent has already been filed today in the registry for reference of Authority.

4. Ld. counsel for complainant stated that complainant was always ready to take possession but the respondent never issued any justification for the illegal demands raised with various offers and letters. He further stated that even if it is presumed that offer of possession dated 01.07.2009 was received by complainant then also the complainant was not bound to accept it as it was accompanied with illegal demands such as EEDC, IDC, STP and

Electrification charges. He referred to page 18, 19 and 44 of complaint in support of plea that said demands were unjustified.

5. In respect of issue of illegal demands, ld. counsel for respondent submitted that whole of demand raised alongwith offer of possession was not unjustified. Likewise demand of EEDC was not unjustified in the year 2009 then why complainant did not come forward at that time for possession. Complainant must have shown bonafide by making payment of atleast justified demand. Further he referred to emails attached by complainant as additional documents to state that complainant took efforts only in year 2013 that too after issuance of cancellation of allotment letter dated 25.03.2013 to contact with respondent regarding copy of ledger of plot booked by him.

6. In view of submissions of ld. counsel for complainant and respondent, Authority observes as under:-

- (i) First issue which needs to be adjudicated is maintainability of complaint. Respondent has referred to para 54 of judgement dated 11.11.2021 passed by Hon'ble Supreme Court in Civil Appeal no. 6745-6749 of 2021 titled as M/s Newtech Promoters & Developers Pvt Ltd vs State of U.P and Ors, in support of the fact that part completion certificate was obtained by developer way back in year 2010 so present complaint does not fall within purview of RERA Act,2016. Written submissions filed by respondent in registry on 21.03.2023 are taken on record and its copy stands supplied to



complainant. Complainant is directed to prove maintainability of present complaints.

- (ii) Second issue is regarding receipt of offer of possession dated 01.07.2009, vide order dated 17.08.2022 Authority has observed that alleged offer has not been received by the complainant due to issue of address but today it has been proved by ld. counsel for respondent that address on which alleged offer was sent is the correct mailing address of complainant and said offer was duly received by complainant. Now question arises here is that why complainant did not accept possession in year 2009 and waited upto year 2013 to contact respondent regarding issue of ledger account. Another important fact herein is that respondent had offered possession on 01.07.2009 but part completion certificate was received on 09.09.2010 then how can the respondent claims the said offer as valid offer as it was not supported with completion certificate in year 2009. Both parties are directed to argue on the point with respect to date of valid offer of possession for calculation of delay interest. It is pertinent to mention here that the as per section 19 (6) and 19 (7) of RERA Act,2016 the complainant-allottee is also duty bound to pay the outstanding amount within stipulated time. Both parties are directed to argue.

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(iii) Third issue which needs to be adjudicated is the disputed demand.

Offer of possession dated 01.07.2009 was accompanied with demand of Rs 7,35,934/- + stamp duty and registration fee of Rs 1,69,950/- and another relevant document pertaining to demand is a letter of execution of conveyance deed dated 27.02.2012 at seriatum, said letter was accompanied with demand of Rs 11,76,600/- + stamp duty and registration fee of Rs 1,94,400/-. Complainant is directed to prove as to what all demands in these two letters/documents is unjustified alongwith documentary proof.

7. Both parties are directed to argue on the above referred issues for proper adjudication of complaints.

8. Cases are adjourned to 01.06.2023 for arguments.


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NADIM AKHTAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]