



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 206 OF 2022

Ramesh Arora

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 19.07.2022

Hearing: 2nd

Present: - Mr. Roop Singh, Ld. Counsel for the complainant.

Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

While perusing case file, it is observed that captioned complaint has been filed by the complainant seeking relief of possession of the booked apartment along with permissible interest as applicable as per Rule 15 of HRERA Rules,2017 for caused delay in offering possession.

2. Brief facts as averred by the complainant is that original allottee Mr. Rajiv Ranjan had booked an apartment in an under construction project 'Park Elite Floor', sector -77, Faridabad being promoted by the respondents on 23.05.2009 by paying Rs 2,00,000/-. An allotment letter dated 24.12.2009 was issued vide which unit No. P-7-18-SF with 876 sq. ft. area was allotted to the original allottee. Builder Buyer Agreement was executed between the original allottee and respondent on 27.04.2010. In terms of Clause 4.1 of the BBA, possession was to be delivered within 24+6 months i.e. by 27.10.2012. Complainant had purchased allotment rights of the unit from original allottee on 13.03.2013. An amount of Rs. 19,24,450/- has already been paid against agreed basic sale price of Rs 16,08,004/-. The fact of basic sale price of Rs. 16,08,004/- having been agreed between the parties is supported by the Builder Buyer Agreement which has been annexed as Annexure P-2 to the complaint. In support of the averment that said amount of Rs. 19,24,450/- has been paid, complainant has annexed receipts issued by the respondent to him annexed as Annexure P-7.

3. Further it has been alleged by complainant that respondent was supposed to deliver possession by year 2012 but he has not offered it till date. Feeling aggrieved, present complaint has been filed by the complainant seeking direction to the respondent to deliver possession of unit alongwith delay interest.

4. Respondent in his reply has admitted allotment of booked unit in favour of the complainant. They have also admitted that said Floor Buyer Agreement had been executed. Respondent has not denied the payments made by the complainant while submitting followings:-

- (i) That possession of booked apartment has been delayed on account of force majeure conditions, mainly related to delay in getting approval of their plans from the departments concerned of the State Government.
- (ii) That provisions of RERA Act do not apply on the agreement executed prior to coming into force of the RERA Act. Respondents have argued that agreements executed prior to commencement of RERA Act, 2016 should be dealt with in terms of clauses of the said agreement.
- (iii) Regarding possession of unit, it has been stated that timelines for possession was subject to force majeure circumstances as stated in clause 13 of BBA.
- (iv) Respondent is willing to refund the amount paid by the complainant alongwith interest.



5. During the course of hearing today, Id. Counsel of the complainants reiterated his written submissions and prayed for relief as cited in para 3 above.

6. On the other hand, Sh. Hemant Saini, learned counsel for the respondent argued that respondent is ready to offer possession of any other alternative unit located in their completed project or they are also ready to refund the money paid by complainant along with interest.

7. Authority has gone through written submissions made by both the parties as well as have carefully examined their oral arguments while observing and issuing following orders:-

- (i) Basic facts of the matter are undisputed with regard to allotment of apartment to complainants on 23.05.2009 and execution of Builder-Buyer Agreement on 27.04.2010 and payment of Rs. 19,24,450/- to the respondent. Possession of booked unit has not been offered by the respondent till date. Respondent said that construction work is still going on and possession of the unit will be handed over shortly.
- (ii) There is no denial to the fact of Rs. 19,24,450/- having been paid by the complainant to the respondent. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainants annexed as Annexure P-7 to the complaint.
- (iii) One of the averments of respondent is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of

RERA Act,2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms and conditions of the provisions of Builder-Buyer Agreements.

In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other with regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts. Subject to the above, argument of learned counsel for the respondents that provisions

of agreement are being altered by Authority with retrospective effect, do not hold any ground.

(iv) The Authority observes that in the event of a project not being completed within reasonable time, a right has been given to the allottees by Section 18 of RERA Act under which allottee has right either to seek refund of the paid amount along with interest or to continue with the project for seeking possession, but could demand monthly interest for the entire period of delay. Authority observes that the right given to the allottee by Section 18 cannot be denied by the Authority. It is only the complainant who by way of compromise with the respondent could arrive at a different settlement. Therefore, plea of the respondent that he is ready to refund the paid amount to the complainant with interest cannot be entertained.

(v) In view of forgoing reasons, it is decided by the Authority that complainants who have been waiting for last 10 years to have possession of booked unit should not suffer anymore on account of default on the part of respondent and is entitled to be paid interest on account of the delay caused therein from the deemed date of possession till handing over of possession that too after receipt of occupation certificate as per principles laid down in complaint no. 113/2018 Madhu Sareen vs BPTP Pvt Ltd in terms of Rule 15 of HRERA Rules, 2017

i.e. SBI MCLR+2% (9.8%)for the period ranging from 27.10.2012 (deemed date of possession) to 19.07.2022. Further, monthly interest shall also be payable upto the date of actual handing over of the possession after obtaining occupation certificate.

(vi) A delay of more than 8 years has already been caused. This fact of inordinate delay entitles the complainants to upfront payment of delayed interest amounting to Rs. 14,51,276/- within a period of 90 days from uploading of this order. Complainants will further be entitled to monthly interest of Rs. 14,090/- from the date of passing this order till the date a valid and lawful offer of possession is made to the complainants.

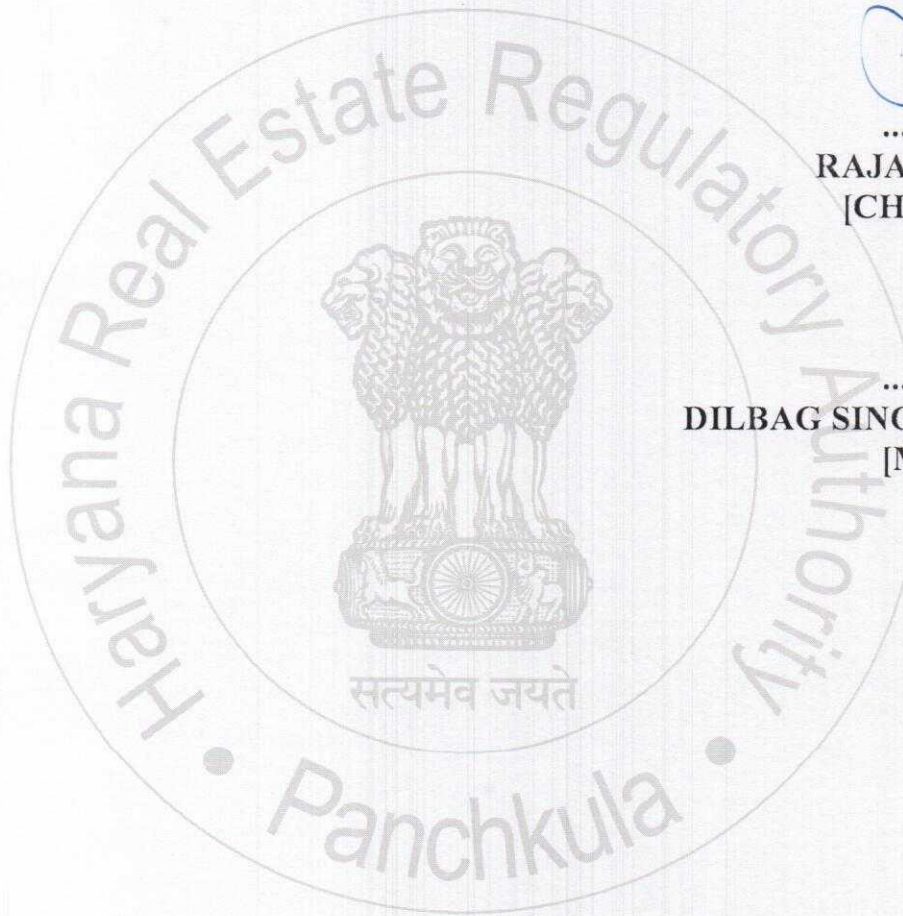
(vii) Delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 16,92,883.6/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,23,889.44/-, Rs 440/- paid on account of EEDC and Rs 16,930/- paid on account of VAT and transfer fee of Rs 90,307/- from total paid amount of Rs 19,24,450.04/-. Amount of such taxes are not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest



thereon becomes payable only to the department by the builder and himself be liable to bear the burden of interest.

(viii) It is pertinent to mention that if any lawful dues remain payable by the complainant to the respondent, same shall remain payable and can be demanded by the respondent at the time of offer of possession.

8. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]