



Complaint No. 1446 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1446 OF 2021

Gajraj Singh and Asha

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 13.07.2022

Hearing: 3RD

Present: Mr. Ramesh Malik, Counsel for the Complainant

Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the Respondent

ORDER: (DILBAG SINGH SIHAG-MEMBER)

The captioned complaint has been filed by the complainants seeking relief of possession of the booked apartment along with interest as applicable as per rules for having caused delay in offering possession and also quashing certain allegedly illegal demands raised by respondents.

2. Brief facts as averred by the complainants are that they had booked an apartment in an under construction project 'Park Elite Floors, sector -77, Faridabad, promoted by the respondents, on 25.05.2009 by paying Rs 2 lacs. An allotment letter dated 06.10.2011 was issued vide which unit No. PC-82-SF with 1025 sq. ft. area was allotted to the complainants. Builder buyer agreement was executed between the parties on 15.05.2012 and in terms of clause 5.1 of it, possession was supposed to be delivered upto 15.11.2014. (24+6 months). An amount of Rs 24,30,887.86/- has already been paid against basic sale price of Rs 19,69,323/-. The fact of basic sale price of Rs. 19,69,323/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-2 to the complaint. In support of the averment that said amount of Rs. 24,30,887.86/- has been paid complainants have annexed a statement of account dated 03.09.2021 issued by the respondent to the complainants. Complainants have, however, not submitted receipts of having made such payments. Said statement of accounts has been made part of the complaint and annexed as Annexure C-3.

3. Further facts of the matter are that respondent offered possession of the booked apartment to the complainants on 14.06.2018. Said offer of possession was conveyed with an additional demand of Rs. 4,31,384 /-. Complainants alleges that they did not accept said offer of possession given by the respondent for the

reason that unit was not ready at that time. Moreover, respondent had not incorporated the interest payable to them for having caused delay of more than 3 years in offering the possession. Complainant alleges that interest for such period of delay is admissible in terms of section 18 of the RERA Act.

4. Further it has also been prayed that club charges amounting to Rs 30,000/- be refunded as there is no mention of any club charges in the builder buyer agreement. Further complainant has sought quashing of charges of Rs 2,13,477/- raised by respondent account of holding charges and Rs 70,460/- raised on account of escalation charges for the reason that respondent himself delayed the handing over of possession so he cannot be allowed to take benefit of his own wrong in charging them. An email dated 29.09.2021 has also been sent by complainants raising their grievances to the respondent. Feeling aggrieved, complainants are seeking relief of possession of booked apartment, quashing of illegal demands pertaining to club membership charges, Cost escalation and holding charges and payment of admissible delay interest.

5. Respondent in their reply has admitted allotment of booked unit and execution of builder buyer agreement in favour of the complainants. Respondent has not denied the payments made by the complainants but submitted his written pleadings in following manner:-



- (i) That possession of booked apartment has been delayed on account of force majeure conditions which mainly relates to the delayed approval of their plans by 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 with clauses of the said agreement.
- (iii) Regarding status of unit, it has been stated that possession of the unit was duly offered to complainant on 14.06.2018 after receipt of occupation certificate dated 02.06.2018 alongwith demand of Rs 4,31,384/- [3,17,384 (towards sale consideration of unit) + 1,14,000/- (towards stamp duty charges)]. Complainants in lieu of acceptance of said offer has already made payment of Rs 2,60,639/- (against sale consideration of unit) on 11.07.2018. Thereafter complainants got issued NOC dated 03.09.2021 for fit outs in their favor and had also executed maintenance agreement on 24.08.2021. Besides this, respondent being customer centric company had also credited Loyalty bonus of Rs 51,373/- to the complainants account which is evident from statement of accounts dated 03.09.2021 annexed as Annexure C-3. Now complainants instead of taking possession has filed frivolous complaint.

(iv) Complainants are defaulter of Section 19 (6) and 19 (7) as not paid remaining balance amount till date.

(v) In respect of club membership charges and cost escalation charges it has been stated that these charges have duly agreed in terms of BBA.

6. Today during the course of hearing, ld. Counsel of the complainants reiterated their written submissions and prayed for relief as cited in para 4 above.

7. Ld. counsel for the respondent reiterated his written submissions and argued that it is the complainant who even after getting completed all documentary formalities did not come forward to take actual possession of unit in lieu of valid offer of possession dated 14.06.2018. Despite their fault, complainants had filed this frivolous complaint without any cause of action. Further he argued that complainants had neither disclosed about execution of maintenance agreement dated 24.08.2021 nor about loyalty bonus of Rs 51,373/- provided by respondent to them. Nor is their case that they had signed those documents under pressure. It has been alleged by the complainants that they did not take possession of unit as unit was not ready at that time but no document has been placed on record in support of it. Therefore, he prayed for dismissal of the complaint.



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

- (i) Basic facts of the matter are undisputed that the apartment was booked by the complainants on 25.05.2009 and Builder-Buyer Agreement was duly executed on 15.05.2012 and complainant has made payment of Rs. 24,30,887.86/- to the respondent. The respondents had issued an offer of possession on 14.06.2018 after receipt of occupation certificate dated 02.06.2018 alongwith demand of Rs 4,31,384/- [3,17,384 (towards sale consideration of unit) + 1,14,000/- (towards stamp duty charges)].
- (ii) One of the averments of respondents 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 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 in 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.

- (iii) Relevant questions arises here for adjudication is as to whether the offer dated 14.06.2018 is valid or not and what should be period of delay interest. Admittedly, possession has been offered by the respondent to complainant on 14.06.2018 after receipt of occupation certificate dated

02.06.2018 alongwith demand of Rs 4,31,384/- [3,17,384 (towards sale consideration of unit) + 1,14,000/- (towards stamp duty charges)]. Fact remains that complainant had paid an amount of Rs 2,60,639/- (against sale consideration of unit) on 11.07.2018 to the respondent in lieu of acceptance of offer of possession on 26.10.2018. Thereafter NOC for fit outs was issued by respondent on 03.09.2021 and maintenance agreement was duly signed between both the parties on 24.08.2021. Allegation of the complainants for not accepting said offer is that unit was not ready at that time. On the other hand, it is the argument of the respondent counsel that if unit was not ready then why did they make the payment of Rs 2,60,639/- and got issued NOC in their favour and signed maintenance agreement. After hearing submissions of both parties, Authority observes that offer of possession dated 14.06.2018 was duly supported with occupation certificate dated 02.06.2018. Grant of OC from competent authority is itself a proof that unit got completed in all respect. Further, allegation of complainants that unit is not ready is not supported with any documentary proof. So, plea of complainant that unit was not ready is not acceptable for the aforesaid reasons. Further, demand of Rs 4,31,384/- [3,17,384 (towards sale consideration of unit) + 1,14,000/- (towards stamp duty charges)] was raised

alongwith offer of possession out of which amount of Rs 2,60,639/- (against sale consideration of unit) was paid by complainants on 10.07.2018 without any protest. No amount was paid by the complainants on account of stamp duty charges. In these circumstances, it can be concluded that said offer was not even accompanied with hefty illegal/unreasonable demands. For these reasons, it is decided that offer of possession dated 14.06.2018 was a valid offer of possession and complainant was bound to accept the same.

- (iv) In respect of delay interest, it is observed that in terms of BBA dated 15.05.2012, respondent was duty bound to deliver possession latest by 15.11.2014 but valid offer of possession was made by respondent on 14.06.2018. So, delay of 3.7 years has been caused in offering possession. For delay of 3.7 years, the complainants are entitled to claim delay interest in terms of Rule 15 of HRERA Rules, 2017. Fact remains that respondent has provided special credit compensation in form of loyalty bonus to complainants of Rs 51,373/- which is evident from statement of accounts dated 03.09.2021. So, delay interest ranging from the period deemed date of possession (15.11.2014) to valid offer of possession (14.06.2018) at the rate prescribed in Rule 15 of HRERA Rules i.e SBI MCLR+2% (9.70%) is awarded to complainants subject



to deduction of Rs 51,373/- loyalty bonus already provided by respondent. Accordingly, delay interest for said period works out to Rs 4,11,534/- and after deduction of Rs 51,373/-, payable delay interest works out to Rs 3,60,161/-. Said amount shall be paid by the respondent to complainant within 90 days of uploading of this order.

- (v) Complainants in support of paid amount of Rs. 24,30,887.86/- has annexed offer of possession dated 14.06.2018 for an amount of Rs 21,64,875.91/- and statement of accounts dated 03.09.2021 for an amount of Rs 24,30,887.86/-. No receipts have been attached in the complaint file. Further, offer of possession dated 14.06.2018 and statement of account dated 03.09.2021 are not relevant for calculation of delay interest as same has been awarded for the period ranging from 15.11.2014 to 14.06.2018. On the other hand, receipts of Rs 15,89,489.15/- are available with the written reply of the respondent. However, an email dated 15.07.2022 was sent to complainant's counsel to submit the proof/receipts of paid amount. Complainant has submitted an application in registry on 29.07.2022 wherein detail of amount paid of Rs 14,22,638.1 has been mentioned in tabular form without annexing any receipts/proof of said payment. Said application is not relied upon for calculation of delay interest as it is not supported with any

documentary proof. Therefore, calculations of delay interest has been made on basis of available record i.e receipts of Rs 15,89,489.15/- attached with written statement of respondent.

- (vi) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 13,39,485.15/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 2,30,181/- and Rs 19,823/- on account of VAT from total paid amount of Rs 15,89,489.15. The amount of such taxes is not payable to the builder and are rather required to 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 concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.
- (vii) Further, complainant's grievances pertain to holding charges, club membership charges and cost escalation charges. In respect of holding charges, it is observed that complainant has duly paid Rs 2,60,639/- against the demand raised of 4,31,384/- [3,17,384 (towards sale consideration of unit) + 1,14,000/- (towards stamp duty charges)] alongwith offer of possession. Though it was a valid offer of possession



complainant was bound to accept it but complainants had made payment of Rs 2,60,639/- and Rs 1,14,000/- remains to be paid on account of stamp duty charges. As such stamp duty charges are payable/meant to be paid for the purpose of execution of conveyance deed and not towards basic sale price of unit. Further, loyalty bonus of Rs 51,373/- had also been credited by respondent in complainant's account. Further complainants were in regular touch with the respondent regarding their grievances which is evident from communication by way email dated 29.09.2021 annexed as Annexure C-5 and documentary formalities like NOC dated 03.09.2021 annexed as Annexure C-4 of complaint. Fact remains that amount of Rs 1,14,000/- on account of stamp duty charges remains payable as per statement of accounts/ offer of possession available on record/complaint file. These charges can be paid directly by the complainants to the concerned department for execution of conveyance deed meaning thereby no actual amount towards basic/total sale consideration payable only particularly to respondent remains payable to respondent. Therefore, holding charges of Rs 2,13,477/- holds no validity in eyes of law and is therefore quashed.

(viii) In respect of cost escalation charges, it is observed that said issue has already been dealt at length by this Authority in case of same respondent



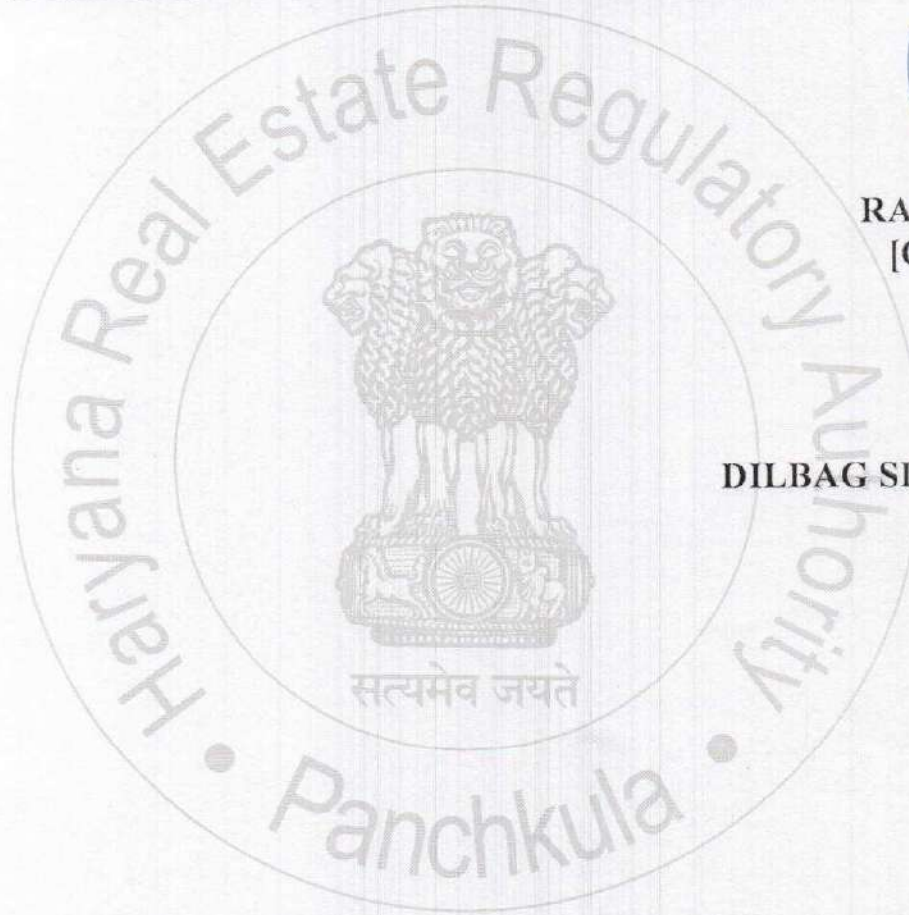
bearing complaint no. 113/2018- titled as Madhu Sareen vs BPTP Ltd. Reasoning and logic given by the Authority in the referred case is applicable in this case also. In respect of club membership charges, these charges have been disputed by complainants on the ground that there is no mention of these charges in BBA. But respondent has rightly argued that these charges find mention in clause 2.6 (e) of BBA and Authority on perusal of BBA finds that these charges has already been agreed between the parties in terms of BBA. So, complainant's plea for refund of club membership charges is not accepted. It is pertinent to mention here that complainants had executed maintenance agreement dated 24.08.2021 with the maintenance agency without any protest and therefore they are liable to pay maintenance charges to the service provider w.e.f date of execution of maintenance agreement.

- (ix) Considering aforesaid observations, Authority directs the respondent to issue fresh statement of account in accordance with observations made in this order duly incorporating therein amount of delay interest of Rs 3,60,161/- payable to complainants and receivable amount from complainants, if any amount remains payable which has been duly agreed in terms of BBA/plan opted by complainants within 45 days of receipt of uploading of this order. Complainants are also directed to take

possession of unit after making payment of remaining amount if any within 45 days of receipt of statement of account issued by respondent.

- (x) It is added that if any lawful dues remain payable by the complainants to the respondent, the same shall remain payable and can be demanded by the respondent at the time of actual handing over of possession.

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





RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]