



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 1243 OF 2021

Saurabh Arora & Amar Nath Arora

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 19.07.2022**

**Hearing: 3<sup>rd</sup>**

**Present: -** Mr. Gaurav Rawat, Ld. Counsel for the complainant through VC.  
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the respondent.

### ORDER (DILBAG SINGH SIHAG-MEMBER)

Captioned complaint has been filed by the complainants seeking relief of possession of the booked apartment along with interest as applicable as per applicable rules for having caused delay in offering possession.

2. Brief facts as averred by the complainants is that original allottee Ms. Preeti Rao had booked an apartment in an under construction project 'Park Elite Floor', sector -85, Faridabad being promoted by respondents on 11.12.2009 by paying Rs 2,50,000/-..An allotment letter dated 24.12.2009 was issued vide which unit



No. P-6-05-SF with 1203 sq. ft. area was allotted to the original allottee. Builder Buyer Agreement was executed between the original allottee and respondent on 16.08.2010. In terms of Clause 4.1 of the BBA possession was to be delivered within 24+6 months i.e. by 16.02.2013. Complainants had purchased allotment rights of unit from original allottee on 09.04.2012. An amount of Rs. 36,51,097/- has already been paid against agreed basic sale price of Rs 25,75,069/-. The fact of basic sale price of Rs. 25,75,069/- 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. 36,51,097/- has been paid, complainants have annexed receipts issued by the respondent to him annexed as Annexure C-6.

3. Further facts of the matter are that respondent offered possession of the booked apartment to the original allottee on 06.10.2018. The said offer of possession was conveyed with an additional demand of Rs. 3,14,066/-. It has been alleged by the complainants that said offer of possession was not valid in eyes of law as it was not supported with occupation certificate and was having illegal demands on account of VAT, GST, Cost escalation, club membership charges, electrification charges and increase in area from 1203 sq ft to 1363 sq ft. Further, the respondent had not incorporated the interest payable to them for having caused delay of more than 8 years in offering the possession. Complainants alleges that interest for such period of delay is admissible in terms of section 18 of the RERA Act. Complainants are seeking relief of possession of booked



apartment, quashing of offer of possession dated 06.10.2018 and illegal demands, and payment of admissible delay interest.

4. Respondent in his reply has admitted allotment of booked unit and execution of Builder buyer agreement in favour of the complainant. Respondent has not denied the payments made by the complainants. They have submitted as follows:-

- (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 of clauses of the said agreement.
- (iii) Regarding possession of unit, it has been stated after completion of construction work of the unit the possession of the unit was offered to complainants on 06.10.2018 alongwith demand of Rs 4,01,415.06/-. Thereafter, respondent being customer centric company had given special discount of Rs 80,000/- and asked the complainants to pay only Rs 3,14,066/-. Complainants in lieu of acceptance of said offer and special discount had made payment of Rs 3,14,066/- on 27.12.2018 and got issued NOC for fit out on 09.01.2019.



(iv) Regarding relief pertaining to delay interest, it has been submitted that complainants are subsequent allottees of booked unit so they are not entitled to delay interest as they were well aware of the status of project at time of purchase of unit from original allottees. In support, he cited para 38 of judgement dated 24.08.2020 of Hon'ble Supreme Court in Civil Appeal number 6239 of 2019 titled 'Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited'.

5. During the course of hearing today, ld. Counsel of the complainants reiterated his written submissions and apprised the Authority that his clients had already taken possession on 20.10.2021 and other issues has been settled between the parties. So, he prayed for awarding of delay interest.

6. On the other hand, Sh. Hemant Saini, learned counsel for the respondent argued that complainants had already taken possession without any protest in year October, 2021 and had thereafter filed frivolous complaint in November, 2021. He prayed for dismissal of complaint.

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 that the apartment was booked by the complainants on 11.12.2009 and Builder-Buyer Agreement was duly executed on 16.08.2010 and complainants have made payment of



Rs. 36,51,097/- to the respondent. Possession of booked unit has already been taken by the complainants on 20.10.2021 in lieu of acceptance of offer of possession dated 06.10.2018 but occupation certificate has not been received by the respondent till date.

- (ii) There is no denial to the fact of Rs. 36,51,097/- having been paid by the complainants to the respondent. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainants annexed as Annexure C-6 to the complaint.
- (iii) 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 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) Regarding question of law posed by the respondent that delay interest is not admissible in respect of a subsequent allottee, the Authority is unable to agree with the contention of the learned counsel for the respondent. In this case, original allottee was allotted an apartment in question on 24.12.2009 and thereafter complainants stepped into the shoes of the original allottee on 09.04.2012. Complainants are not claiming their right through previous allottee. Moreover, in terms of definition of 'allottee' provided under Section 2(d) of RERA Act,2016 the person who has subsequently acquired allotment of unit through sale, transfer or otherwise i.e subsequent allottee is duly covered in it. So, for all practical purposes, present complainants are like an original



allottee. Section 2 (d) of RERA Act,2016 is reproduced below for reference:-

*Allottee- in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be has been allotted or sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom the plot or apartment is given on rent.*

For the reasons stated above, argument of the respondent cannot be accepted.

- (v) Admittedly, possession of the unit was offered to complainants on 26.10.2018 alongwith demand of Rs 4,01,415.06/-. Complainants had made payment of Rs 3,82,000/- towards acceptance of said offer on 27.12.2018. Thereafter, complainants took possession of booked unit on 20.10.2021 and filed present complaint on 25.11.2021 seeking relief of delay interest, quashing of offer of possession dated 26.10.2018 and illegal demands raised alongwith offer. Status in respect of taking over of possession in October,2021 has been revealed by complainant's counsel at the time of hearing, he further stated that all other issues got settled between the parties except issue of delay interest. Accordingly, this complaint is now proceeded further only for relief of delay interest. In terms of BBA dated 16.08.2010 the respondent was duty bound to



deliver possession upto 16.02.2013. But possession was offered by respondent to complainants on 26.10.2018 that too without receipt of occupation certificate. A specific query was put up to ld. counsel for the respondent as to when occupation certificate has been received for the unit in question. In reply, it has been stated that occupation certificate has not been received till date, nevertheless he argued that possession has already been taken by the complainant a year ago, so no question arises for delay interest at this point of time. Rebutting to his statement, Ld. counsel for the complainants stated that delay interest has to be awarded for any delay caused by the respondent in handing over of possession which is evident from factual position of the case as possession was supposed to be delivered in year 2013 whereas it was offered in 2018 with delay of 6 years i.e. in year 2018.

After hearing submission of both parties, Authority is of view that respondent has offered possession of the unit after delay of around 6 years. Complainants had made payment of Rs 3,82,000/- towards said offer and got issued NOC for fit out on 09.01.2019. Possession has also been taken by complainant on 20.10.2021. But occupation certificate has not been received by the respondent till date which means offer dated 26.10.2018 was not a good offer in the eyes of law. Complainants were not bound to accept it, however fact remains that complainants have already took possession of booked unit in October,2021 after



settling all issues with respondent and that too voluntarily. In these circumstances, only relief which can be awarded to the complainants is delay interest for a period ranging from deemed date of possession to date of taking over of possession i.e 16.02.2013 to 20.10.2021 in terms of Rule 15 of HRERA Rules,2017 i.e. SBI MCLR + 2% (9.8%). Accordingly, the amount of delay interest works out to Rs 23,90,563/-.

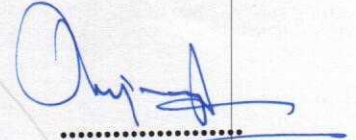
(vi) Delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 32,13,949.36/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,61,948.32/-, Rs 97,829.42/- paid on account of EEDC and Rs 26,267/- paid on account of VAT and stamp duty charges of Rs 3,82,000/- from total paid amount of Rs 38,81,994.10/-. The 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.

(vii) Complainants against the admitted payment have attached receipts of Rs. 13,01,880.71/- as Annexure C-6. An e-mail dated 26.07.2022 was written to the complainants to submit receipts of balance payments so as to verify the date of such payments were made to enable the



Authority to calculate payable interest thereon. Complainants have submitted the receipts of the total paid amount of Rs. 38,81,994.10/- . Accordingly, calculations have been got made taking total paid amount as Rs 38,81,994.10/- .

8. Respondent is directed to pay delay interest of Rs 23,90,563/- to complainants within a period of 45 days of uploading of this order.
9. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]

