



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO.811 of 2021

Elite floor H block buyers welfare association

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 13.07.2022

Hearing: 5th

Present: - Mr. Nitin Kant Setia, Ld. Counsel for complainant through VC
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the
respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

On the last date of hearing the following order was passed:-

“Vide order dated 03.02.2022, it was observed by the Authority that a single complaint for all 26 complainants is legally not justified since facts and terms and conditions of contract may differ from one to others and accordingly,

learned counsel for the complainant was advised to file individual complaints of remaining 25 complainants so that their complaints may be adjudicated and decided on their respective facts and merits. Relevant part of said order is reproduced below for reference: -

“Authority agreeing with the argument of ld. counsel for respondent is of the view that a single complaint for all 26 complainants is legally not justified since facts and terms and conditions of contract may differ from one to others. Moreover, the amounts paid by different allottees are different and their respective deemed date of possession can also be different. As per the provisions of Section 18 of RERA Act, 2017 the complainant allottees are entitled for delay interest from the respective deemed date of possession to the date as and when offer of their respective units being offered. Therefore, learned counsel for the complainant has been advised to file individual complaints of remaining 25 complainants so that their complaints may be adjudicated and decided on their respective facts and merits. Learned counsel of complainant is allowed to file individual complaints with an advance copy to the respondent. The entire process of filing of complaints may be completed within a week so that respondent may file his replies well in time.”

2. While initiating his pleadings, Sh. Nitin Kant Setia, Ld. counsel for the complainant states that his client had booked unit no. H-6-15 having area of 1022 sq ft in respondent's project-Park Elite floors, situated at Faridabad by paying Rs 2.5 lacs on 26.05.2009. Thereafter, builder buyer agreement was executed between the parties on 27.09.2010 and in terms of it, possession was supposed to be delivered BY 27.03.2013. It has been alleged that possession has not been offered till date even after receiving an amount of Rs 23,70,874/- against basic sale price of Rs 22.80 lacs.

3. Sh. Hemant Saini, Ld. counsel for the respondent submitted that construction work was going on in full swing

and possession of unit would be handed over soon after obtaining occupation certificate from the competent authority to the complainant.

4. Considering the written and oral submissions of the respondent the Authority is of considered view that respondent remained failed in his duty to deliver possession within the stipulated time . Moreover, today also he is not in a position to handover the possession of the booked unit as construction work is still going on. Therefore, complainant should not suffer for the fault of respondent. So, Authority prima facie is of view that respondent should pay upfront amount of delay interest accrued from deemed date of possession till date of order. Thereafter monthly amount is to be given to the complainant till handing over of booked property after getting occupation certificate from the competent authority. At this stage, Ld. counsel for the complainant further insisted to argue on two issues (a) he is praying for delay interest from the date of payment of booking amount instead of deemed date of possession and (b) he is seeking delay interest on the whole amount paid inclusive of amount of taxes i.e. EDC/IDC, VAT and EEDC. Ld. counsel for respondent seeks some time to argue on these two issues. His request is accepted. Case is adjourned to 25.05.2022 with a direction to complainant's counsel that he shall file his written submissions on both issues raised by him and shall also supply its copy to respondent's counsel in advance."

2. While initiating his pleadings, Sh. Nitin Kant Setia, Ld. counsel for the complainant states that his client (lead case Leena Sharma and Chandramani Sharma) had booked unit no. H-6-15 having area of 1022 sq ft in respondent's project-Park Elite floors, situated at Faridabad by paying Rs 2.5 lacs on

26.05.2009. Thereafter, builder buyer agreement was executed between the parties on 27.09.2010 and in terms of it, possession was supposed to be delivered by 27.03.2013 (24+6 months). It has been alleged that possession has not been offered till date even after receiving an amount of Rs 23,70,874/- against basic sale price of Rs 20,55,999/- duly verified and considered in the Builder Buyer Agreement executed between the parties which has been annexed as Annexure P-4 to the complaint. In support of the averment that said amount of Rs. 23,70,874/- has been paid, complainants have annexed receipts of Rs 24,32,624.92/- issued by the respondents to them and further reflected in statement of accounts dated 10.04.2012 for total amount of Rs 23,36,399.38/-, copies of receipts and a statement of accounts have been made part of the complaint and annexed as Annexure P-5 and P-6 respectively.

3. Further it has been alleged by complainants that respondent was supposed to deliver possession by year 2013 but he has not offered it till date. Feeling aggrieved, present complaint has been filed by the complainants seeking direction to the respondent to deliver possession of unit alongwith delay interest.

4. On the other hand, respondents in their reply have admitted allotment of booked unit and execution of Builder buyer agreement in favour of the complainants. Respondent has neither denied the payments made by the complainants while submitting his following pleadings:-

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- (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 that construction work is in progress and possession of same will be handed over shortly.

5. Today, during the course of hearing, ld. Counsel of the complainants reiterated their written submissions and prayed for relief as cited in para 3 above. Further, he argued on these two issues (a) praying for delay interest from the date of payment of booking amount instead of deemed date of possession and (b) further seeking delay interest on the whole paid amount inclusive of amount of taxes i.e. EDC/IDC, VAT and EEDC.

He relied upon Section 13 of RERA Act, 2016 in support of his argument that delay interest has to be paid from date of booking. Further he argued that respondent kept demanding money from complainant after booking till 16 months and then presented BBA for signatures. At that time complainant who has paid around 20-25% of amount, did not have any option but to sign on dotted lines.

So, the intentional act of respondent in delaying the execution of BBA is clear violation of Section 13 of RERA Act,2016.

Next argument raised by him is that delay interest should be awarded on the total paid amount inclusive of amount of taxes. In support he relied upon para 55 of judgement dated 24.08.2020 passed by Hon'ble Supreme Court in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. versus DLF Southern Homes Pvt Ltd and ORs and provisions of Section 19(6) and 19(7) and Rules 15 of HRERA Rules,2017 emphasizing the word 'any amount' and 'entire amount' respectively. In support of his arguments, he has filed his written submissions. Same is taken on record and its copy has been supplied to respondent's counsel in the Court itself.

6. On the other hand, Sh. Hemant Saini, learned counsel for the respondent submitted that construction work was going on in full swing and possession of unit would be handed over soon after obtaining occupation certificate from the competent authority to the complainant.

In rebuttal to arguments of ld. counsel of complainant, he argued that booking in this case was made by complainant in year 2009 and BBA was executed in year 2010 i.e. 7 years prior to enforcement of RERA Act,2017. It is practically impossible to amend the already agreed terms and conditions after 7-10 years. Moreover, complainants were not forced to enter into BBA with the respondent, no document/evidence has been placed on record to prove that BBA

was executed without consent of complainants. It was not the case that complainants were to sign on dotted lines. Regarding issue of delay interest, it has been argued by him that total sale consideration of unit is inclusive of basic sale price + taxes, but said taxes are to be paid to the Government authorities on behalf of complainant/allotees by the respondent. So, taxes are not meant for pocket of respondent-developer rather these are paid to Government authorities for carrying out development works.

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

- (i) Admittedly, basic facts of the matter are undisputed as far as booking of the apartment by the complainants on 26.05.2009 and execution of Builder-Buyer Agreement on 27.09.2010 and complainant's payment of Rs. 24,32,624.92/- to the respondent are concerned. Possession of booked unit has not been offered by 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. 24,32,624.92/- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the copies of receipts and a statement of accounts annexed as Annexure P-5 and P-6 respectively of 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) 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 an option either to seek refund of the amount paid along with permissible interest or continue with the project for seeking possession, or could demand monthly interest for the entire period of delay. The Authority observed that the right given to the allottee by Section 18 cannot be denied by the Authority.
- (v) Arguments of both parties in respect of issue of awarding of delay interest w.e.f date of booking and on total paid amount inclusive of taxes have been meticulously heard. Authority observes that ld. counsel for the complainants was relying upon Section 13 of RERA Act, 2016 vis-à-vis BBA dated 27.09.2010. Complainant had applied for booking of unit on 26.05.2009 by paying Rs 2.5 lacs and thereafter he has paid an amount of Rs 2,38,300/- on 21.08.2009, Rs 2,23,120/- on 22.10.2009 and thereafter got executed BBA on 27.09.2010. There

is gap of around 14 months between booking and execution of BBA. Complainants duly honoured each and every demand raised by respondent without any protest and had also signed BBA without any protest till filing of present complaint. Expressive acceptance on part of the complainants by making payments and kept silence from last 12 years regarding late execution of BBA does not imply that they have to sign on dotted lines that too without their consent. Parties have entered into BBA wilfully and mutual consensus so the clause in respect of deemed date of possession holds validity and complainants are liable for delay interest only w.e.f date of deemed date of possession which is 27.03.2013.

As far as issue of awarding of delay interest inclusive of taxes, it is observed that the judgement dated 24.08.2020 passed by Hon'ble Supreme Court in Civil Appeal no. 6239 of 2019 titled as Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. versus DLF Southern Homes Pvt Ltd and ORs cited by complainant's counsel is not relevant here as question of Basic sale price and taxes was not involved in the cited case and there is no examination/finding on said issue. Secondly, in respect of provisions of Section 19 (7) and Rule 15 of HRERA Rules, 2017 the word 'any amount' and 'entire amount' respectively has been emphasized. These words are to be read as part and parcel of

whole Section/Rules and intent/objective behind that Section/Rules.

Section 19 (7) reads as under-

The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section(6).

Said section talks about allottee's liability to pay interest for any delay in payment towards any amount or charges to be paid under sub-section (6). Section 19 (6) reads as under:-

Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

If we read these Sections in comprehensive, it is found that duty is cast upon on allottee to pay amount defined in Section 19(6) which includes registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges and if said charges are not paid on time then he will be liable to pay interest on any amount or charges. Herein the amount in Section 19(6) and 19 (7) can be any amount and is not restricted to basic/total sale price. There is no point made out as to what should be the amount for calculation of delay interest. Similarly, in Rule 15 of HRERA

Rules, 2017 the word 'entire amount' is to be read in whole not as an individual phrase/words.

As general practice, cost of any service or product is always basic cost + taxes, in the same manner. Total cost of unit is to be calculated on basic sale price inclusive of taxes payable to government authorities. Respondent developer is just a medium of passing the amount of taxes on behalf of allottee to the concerned authorities, At the time of getting license to develop a project from DTCP, developer undertakes to pay amount of taxes within time bound manner, and if he fails or delay that payment, he has to bear interest on it. So, the taxes as such are not paid to respondent for his pocket, they are being transferred by him to government authorities. For these reasons, the plea of complainant is rejected.

- (vi) In view of forgoing reasons, it is decided by the Authority that complainants who have been waiting for last 9 years to have possession of unit should not suffer anymore on account of default on the part of respondent and are 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% (9.7%) for the period ranging from 27.03.2013 (deemed date of possession) to 13.07.2022. Further, monthly interest shall also be payable upto the date of actual handing over of the possession after obtaining occupation certificate.


(vii) A delay of more than 9 years has already been caused. This fact of inordinate delay having been caused entitles the complainants to upfront payment of delayed interest amounting to Rs. 19,49,911/- within a period of 45 days from uploading of this order. Complainants will further be entitled to monthly interest of Rs. 17,800/- from the date of passing this order till the date a valid and lawful offer of possession is made to the complainants.

(viii) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 21,60,569.41/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,65,812.33/- , Rs 81,232.18/- on account of EEDC and Rs 25,011/- paid on account of VAT from total paid amount of Rs 24,32,624.92/-. 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 he himself be liable to bear the burden of interest.

(ix) It is pertinent to mention that if any lawful dues remain payable by the complainants 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 SHAG
[MEMBER]

