



Complaint no. 93/2022

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 93 of 2022

Kuldeep Singh Thakur

....COMPLAINANT(S)

VERSUS

M/s BPTP Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 10.08.2022

Hearing-3rd

Present: - Mr. Arjun Kundra, Ld. Counsel for the complainant through VC

Mr. Hemant Saini, Ld. Counsel for the respondent through VC.

ORDER (DILBAG SINGH SIHAG-MEMBER)

While examining case file, it is observed that captioned complaint has been filed by the complainant seeking relief of possession of the booked

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apartment along with interest as applicable as per applicable rules for having caused delay in offering possession.

2. Brief facts as averred by the complainant is that he had booked an apartment in an under construction project 'Park Elite Floor', sector -77, Faridabad being promoted by respondents on 25.05.2009 by paying Rs 2,00,000/- .An allotment letter dated 06.10.2011 was issued vide which unit No. PE-340-GF with 1371 sq. ft. area was allotted to the complainant. Builder Buyer Agreement was executed on 01.03.2012. In terms of Clause 5.1 of the BBA possession was to be delivered within 24+6 months i.e. by 01.09.2014. Complainants have already paid Rs. 28,20,97.18/- against agreed basic sale price of Rs 26,44,399/. The fact of basic sale price of Rs. 26,44,399/-having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-3 to the complaint. In support of the averment that said amount of Rs. 28,20,978.18/- has been paid, complainant has annexed receipts issued by the respondents to them and statement of accounts dated 20.11.2021, copies of receipts and a statement of accounts have been made part of the complaint and annexed as Annexure C-4.

3. Further it has been alleged by complainant that respondent was supposed to deliver possession by year 2014 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. Respondents in their reply have admitted allotment of booked unit and execution of floor buyer agreement in favour of the complainant. Respondents have not denied the payments made by the complainant. 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 in para 4.3 of reply that construction work is in progress and possession of same will be handed over shortly.
- (iv) Respondent is willing to refund the amount paid by complainant alongwith interest.

5. Today, during the course of hearing, Id. Counsel of the complainants reiterated their written submissions and prayed for relief as cited in para 3 above.

6. On the other hand, Sh. Hemant Saini, learned counsel for the respondents 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 as stated in their written statement.

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 regarding booking of the apartment by the complainant on 25.05.2009 and execution of Builder-Buyer Agreement on 01.03.2012 and complainant's payment of Rs. 28,20,978.18/- to the respondent. 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. 28,20,978.18/- having been paid by the complainant to the respondents. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainants and statement of accounts dated 20.11.2021 which are annexed as Annexure C-4 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) 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. It is only the complainant who by way of compromise with the respondent could arrive at a different settlement, therefore plea of respondent that he is ready to refund the paid amount to 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 8 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% (9.8%) for the period ranging from 01.09.2014 (deemed date of possession) to 10.08.2022. Further, monthly interest shall also be

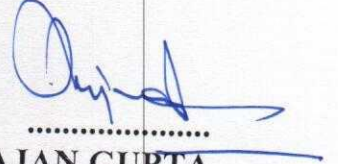
payable upto the date of actual handing over of the possession after obtaining occupation certificate.

- (vi) A delay of more than 8 years has already been caused. This fact of inordinate delay having been caused entitles the complainants to upfront payment of delayed interest amounting to Rs. 16,94,174/- within a period of 90 days from uploading of this order. Complainants will further be entitled to monthly interest of Rs. 20,637/- from the date of passing this order till the date a valid and lawful offer of possession is made to the complainants.
- (vii) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 24,79,458.18/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 3,23,760/- and Rs 17,760/- paid on account of VAT from total paid amount of Rs 28,20,978.18/-. 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.



(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]

