



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

**COMPLAINT NO. 209 of 2022**

Vimal Kumar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 04.08.2022**

**Hearing: 2<sup>nd</sup>**

**Present:** Shri Rahul Rathore, Counsel for the complainant through VC.

Shri Hemant Saini and Shri Himanshu Monga, Counsel for the  
Respondent.

**ORDER: (DILBAG SINGH SIHAG-MEMBER)**

Captioned complaint has been filed by the complainant seeking relief of  
possession of the booked apartment along with interest as applicable.



2. Brief facts as averred by the complainant are that the original allottee Ms. Neena Verma and Manav Verma booked a unit in the respondent's project Discovery Park, Sector 80, Faridabad on 24.02.2011. Floor buyer agreement was executed for unit no. B-906, Tower B, Floor No. 9, Discovery Park, Sector 80, Faridabad between the original allottee and respondent on 28.11.2012. The original allottees endorsed the said unit in favor of Ms. Anita Deswal on 10.12.2012. Said unit was transferred in the name of complainant Mr. Vimal Kumar on 30.06.2014. Fresh floor buyer agreement was executed between the complainant and respondent on 15.09.2014. As per clause 6.1 of the agreement possession of the unit was to be delivered by 15.03.2020. (60+6 months). An amount of Rs. 36,93,919.47/- has already been paid against agreed basic sale price of Rs. 27,90,144/-. Fact of basic sale price of Rs. 27,90,144/- having been agreed between the parties is supported by the Agreement executed between the parties which has been annexed as Annexure P-2 to the complaint. In support of the averment of said amount of Rs. 36,93,919.47/-, complainant has annexed receipts of payments issued by the respondent. Despite lapse of agreed time period for delivery of apartment, respondents have still not offered possession to the complainant.

3. Feeling aggrieved, present complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit



along with delay interest from deemed date of possession i.e., 15.03.2020 till the date respondent offers valid possession.

4. Respondents in their reply have admitted allotment of booked unit in favour of the complainant. Respondents have also admitted payments made by the complainant. Respondents however submit as follows: -

(i) That provisions of RERA Act do not apply on the agreement executed prior to coming into force of the RERA Act. The 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.

(ii) Possession was to be delivered within 60 months from the date of execution of agreement after adding grace period of 6 months. Said delivery of possession was subject to no force majeure circumstances being occurred. During the course of construction various force majeure events took place like ban on construction by Environment Pollution (Prevention and Control) Authority, NGT prohibiting construction, Covid-19 outbreak and Ban on construction as per M.C Mehta vs Union of India. Possession of the unit will be handed over shortly.





(iii) Agreement dated 28.11.2012 has been denied but agreement executed between the complainant and respondent on 15.09.2014 has been admitted by the respondent.

5. During the course of hearing today the ld. Counsel of both parties reiterated their written submissions and complainant has prayed for relief as cited in para 3 above.

6. Authority has gone through written submissions made by both the parties as well as have carefully examined their oral arguments. It observes and orders as follows: -

(i) Basic facts of the matter are undisputed regarding booking of the apartment on 24.02.2011, execution of Builder-Buyer Agreement and payment of Rs. 36,93,919.47/- to the respondents. Respondent in their reply has stated that possession of the unit will be handed over shortly but no possession has been offered to the complainant till date. Nothing has been stated by the respondent with respect to status of Occupation Certificate.

(ii) There is no denial to the fact of Rs. 36,93,919.47/- having been paid by the complainant to the respondents. Respondent has also admitted payment in para 7 of their reply. Payment of this amount is further adequately proved



from the receipts issued by the respondents to the complainant. The copy of said receipts has been made part of 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 of 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 provided various clauses of agreement is not discriminating in nature and un favour of one party.

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 especially of delay period of pre-RERA period. 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) As far as his pleadings of force majeure is concerned, it has no legal weightage since the lockdown of pandemic COVID-19 was after deemed date of possession. He has not mentioned any instance of catastrophe which hampered construction work before 2014 and after execution of BBA.
- (v) Due date of possession was March 2020. Now, even after lapse of 2 years respondent is not able to offer possession to the complainant. Respondent has not even specified as to when respondent will be in a position to handover possession of booked apartment and are stating that possession will be offered shortly. Complainant however is interested in getting the



possession of their apartment. He does not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed.

(vi) Admittedly, the respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation certificate of the project in question. So, the Authority has no hesitation in concluding that the complainant is entitled for the delay interest from the deemed date i.e., 15.03.2020 to the date on which a valid offer is sent to her after obtaining occupation certificate.

(vii) Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 7,42,163/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 36,93,919.47/- monthly interest of Rs. 27,204/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.



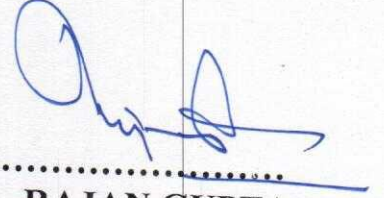
(viii) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 31,66,297.23/-. Said total amount has been worked out after deducting VAT amounting to Rs 13,071/-, Development charges amounting to Rs. 2,93,669/-, EEDC amounting to Rs. 1,34,196/-, transfer fee amounting to Rs. 86,596/- and service tax amounting to Rs. 90.24/- from total amount of Rs 36,93,919.47/- paid by complainant. These amounts of taxes are not payable to the builder and are rather required to be passed on by the builder to the concerned department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable 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. In other words, it can be said that the amount of taxes and EDC, EEDC and IDC collected by a builder cannot be considered towards determining the interest payable to the allottee on account of delay in delivery of possession.

7. The Authority further orders that while upfront payment of Rs. 7,42,163/- as delay interest shall be made within 90 days of uploading of this order on the website of the Authority as per Rule 16, the monthly interest of Rs.




27,204/- will commence w.e.f. 5<sup>th</sup> September, 2022, payable on 5th October 2022 onwards.

**Disposed of** in above terms. File be consigned to record room after uploading order on the website of the Authority.



RAJAN GUPTA  
(CHAIRMAN)



DILBAG SINGH SIHAG  
(MEMBER)

