



Complaint no.219,236,241  
245,256 all of 2022

# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 219 OF 2022

Mohit Bhardwaj

VERSUS

....COMPLAINANT(S)

BPTP Ltd

....RESPONDENT(S)

## 2. COMPLAINT NO. 236 OF 2022

Shaveta Arora

VERSUS

....COMPLAINANTS(S)

BPTP Limited

....RESPONDENT(S)

## 3. COMPLAINT NO. 241 of 2022

Dr Medini Prasad Roy

VERSUS

....COMPLAINANT(S)

M/s BPTP Ltd

....RESPONDENT(S)

## 4. COMPLAINT NO. 245 OF 2022

Mohit Mehta

VERSUS

....COMPLAINANT(S)

M/s B.P.T.P Ltd

....RESPONDENT(S)

## 5. COMPLAINT NO. 256 OF 2022

Neeraj Kukreti

VERSUS

....COMPLAINANT(S)

M/s B.P.T.P Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 17.08.2022**

**Hearing-3<sup>rd</sup> in all cases**

**Present: - Mr. Nitin Kant Setia, Ld. Counsel for the complainant in all cases.**

**Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the respondent in all cases**

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

All above captioned complaints are taken up together for hearing as they involve similar grievances and are against same project of the Respondent/Promoter This order is passed by taking complaint no. 219/2022 titled as Mohit Bhardwaj vs BPTP Ltd as lead case.

2. While examining case file, it is observed that captioned complaints had been filed by the complainants seeking relief of possession of his respective booked apartment along with interest as applicable for delay in offering possession of the apartment from deemed date of possession.

3. Brief facts as averred by the complainant are that an original allottees Manish Gaurav and Urmila Gupta had booked unit in respondent's project

'Park Elite floors', situated at Faridabad by paying Rs 2 lacs on 06.06.2009. An allotment letter dated 24.12.2009 was issued vide which unit No. J-09-GF with 876 sq. ft. area was allotted to the original allottees. Thereafter, respondent has arbitrarily re-allotted/changed unit from J-09-GF to H-13-06-FF having area of 1168 sq ft. Builder Buyer Agreement (BBA) for new/said unit was executed on 28.08.2013. In terms of clause 4.1 of the BBA, possession was supposed to be delivered within 24+6 months, which comes to 28.02.2016. Thereafter, allotment rights of the unit was purchased by subsequent allottee named Neeraj Jalota and Shweta vide sale letter dated 03.10.2013. Complainants purchased allotment rights of unit in question from subsequent allottee vide sale letter dated 24.07.2018. It has been alleged that possession has not been offered till date even after receiving an amount of Rs 22,14,068.91/- against basic sale price of Rs 23,16,104/- duly verified and considered in the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-2 to the complaint. In support of the averment of said amount of Rs. 22,14,068.91/-, complainant has annexed receipts of Rs 22,14,068.91/- issued by the respondents to him and further reflected in statement of accounts dated 23.08.2018, copies of receipts and a



statement of accounts have been made part of the complaint and annexed as Annexure C-4 and C-5 respectively.

3. Further it has been alleged by the complainant that respondent was supposed to deliver possession by year 2016 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 the unit alongwith delay interest.

4. On the other hand, 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 complainant while submitting his following pleadings:-

(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 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'.
- (iv) 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 course of hearing, ld. Counsel of the complainant reiterated his written submissions and prayed for relief as cited in para 3 above especially while arguing on 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 the date of booking. Further he argued that respondent kept demanding money from original allottees/complainant before execution of BBA. When allottees paid around 20-25% of amount, allottees under given circumstances did not have any option but to sign on dotted lines. So, 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 regarding delay interest 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.

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.

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In rebuttal to arguments of ld. counsel of complainant, he argued that booking in this case was made by original allottees in year 2009 and BBA was executed in year 2013 i.e. 4 years prior to enforcement of RERA Act,2017. It is practically impossible to amend already agreed terms and conditions after 4-5 years. Moreover, original allottees were not forced to sign BBA with the respondent, no document/evidence has been placed on record to prove that BBA was executed without consent of original allottees. It was not a case where original allottees were to sign on dotted lines and complainant was forced to purchase the unit in question from open market. Regarding issue of delay interest, it has been argued by him that complainant being subsequent allottee is not entitled to delay interest.

7. Authority has gone through written submissions made by both parties as well as 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 original allottees on 06.06.2009, execution of Builder-Buyer Agreement on 28.08.2013 and payment of Rs. 22,14,068.91/- to the respondent are concerned. Possession of



booked unit has not been offered by the respondent till date as construction work is still going on.

- (ii) There is no denial to the fact of Rs. 22,14,068.91/- having been paid by the complainant to the respondent. Payment of this amount is further adequately proved from the copies of receipts and a statement of accounts annexed as Annexure C-4 and C-5 respectively of complaint.
- (iii) One of the averments of the 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 are 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 barring retroactive applicability of RERA Act,2016 in pre-RERA period





when possession was not offered on deemed date of possession and there is a discriminatory provision with regard to charging of interest on delay payment and in offer of possession.

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 regard to retroactive applicability of RERA Act, 2016 for Pre-RERA period, Majority two members on one side and Chairman on the other. Majority members were of the view that retroactive applicability shall be from the deemed date of possession whereas Chairman was of view that for pre-RERA period, whatever written in BBA must be retained as it is and RERA shall be applicable from the date of enforcement of the Act. Chairman had further expressed his view in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' However, 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 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) Authority further 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. 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 28.08.2013. Original allottees had applied for booking of unit on 06.06.2009 by paying Rs 2 lacs and thereafter they have paid an amount of Rs 36,901/-on 19.08.2009, Rs 1,45,000/- on 19.08.2009, Rs 2,62,573/- on 04.06.2013, Rs

2,58,758/- on 12.07.2013 and thereafter got executed BBA on 28.08.2013. Original allottees duly honoured each and every demand raised by the respondent without any protest while signing BBA, thereafter complainant purchased unit in question from open market in year 2018 and did not raise any objection against said BBA till filing of present complaint. Expressive acceptance on part of the original allottees as well as complainant by making payments and kept silence for last 9 years in this regard. Late execution of BBA does not imply that they have to sign on dotted lines that too without their consent. In the absence of proper documents Authority is of the view that parties have entered into BBA willfully and mutual consensus. So, the clause in respect of deemed date of possession holds validity and complainant is liable for delay interest only w.e.f date of deemed date of possession which is 28.02.2016.

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.*



After reading of these Sections comprehensive, it is found that duty is cast upon the allottee to pay amount as defined in Section 19(6) includes various charges such as registration charges, municipal taxes, water and electricity charges and so on. If said charges are not paid on time then he would be liable to pay interest on such amount. Herein, amount as far 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 always includes 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, taxes as such are not paid to the respondent for his pocket, rather being transferred by him to the government authorities. For these reasons, plea of complainant is rejected.

- (vi) As far as question of law posed by the respondent with regard to delay interest is concerned it 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 subsequent allottees (Neeraj Jalota and Shweta) purchased allotment rights of unit on 03.10.2013 and then complainant stepped into the shoes of the original allottee/subsequent allottee on 24.07.2018. Builder buyer agreement in respect of booked unit got executed between the original allottees and respondent on 28.08.2013. Here complainant is not claiming his right through the 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, the 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.*

It is pertinent to mention here that Hon'ble Supreme Court in Civil Appeal no. 7042 of 2019 titled as M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh has held that that per se bar to the relief of interest on refund, enunciated by the decision in 'Huda vs Raje Ram' which was applied in 'Wg. Commander Arifur Rahman' cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. In this case complainant had stepped into shoes of original allottees on 24.07.2018. Said transfer was duly endorsed by respondent on 20.10.2018. In terms of said builder buyer agreement deemed date of possession comes to 28.02.2016. Respondent was duty bound to deliver possession within stipulated time but he has failed in his

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duty. No reasonable justification/explanation has been provided by the respondent for delay of 6 years. Even today, no specific timeline has been committed by the respondent. Status mentioned in the reply is that construction is going on in full swing and possession will be handed over shortly which implies that project is not complete. This act is a serious default on part of the respondent. In view of aforesaid reasons, argument of respondent is not accepted.

- (vii) In view of forgoing reasons, it is decided by the Authority that complainants who have been waiting for last 6 years to have possession of unit should not suffer anymore on account of default on the part of respondent and is 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% (10%) for the period ranging from 28.02.2016 (deemed date of possession) to 17.08.2022. Further, monthly interest shall also be payable upto the

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

- (viii) A delay of more than 6 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. 13,28,510/- within a period of 45 days from uploading of this order. Complainants will further be entitled to monthly interest of Rs. 17,429/- from the date of passing this order till the date a valid and lawful offer of possession is made to the complainants.
- (ix) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 20,52,139.07/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,40,403.84/- and Rs 21,526/- paid on account of VAT from total paid amount of Rs 22,14,068.91/-. 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

*[Handwritten signature]*

only to the department by the builder and he himself be liable to bear the burden of interest.

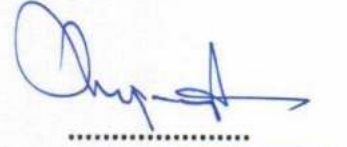
- (x) Upfront interest and monthly interest payable to each complainant is shown in the table below:-

Sr . No.	COMPLAINT NO.	TOTAL AMOUNT PAID BY THE COMPLAIN ANT- AMOUNT OF TAXES  (In Rs.)	FINAL AMOUNT FOR CALCULA TION OF INTEREST  (In Rs.)	DEEMED DATE OF POSSESSION	UPFRONT DELAY INTEREST CALCULA TED UPTO 17.08.2022  (In Rs.)	FURTHER MONTHLY INTEREST  (In Rs.)
1.	219/2022	22,14,068.91- 1,61,929.84	20,52,139.07	28.02.2016	13,28,510	17,429
2.	236/2022	24,34,625.27- 2,63,403.63	21,71,221.64	20.02.2013	15,44,700	18,441
3.	241/2022	25,28,610.68- 2,65,100.78	22,63,509.9	21.03.2013	21,31,420	19,224
4.	245/2022	22,66,461.83- 2,84,933.68	19,81,528.15	27.02.2013	18,77,837	16,829
5.	256/2022	23,50,565.83- 2,62,026.56	20,88,539.27	22.03.2013	19,66,088	17,738

- (xi) 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 SIHAG  
[MEMBER]

