



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website; www.haryanarera.gov.in

COMPLAINT NO. 248 OF 2022

Ajay Kumar Ahuja

...COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 16.08.2022

Hearing: 3RD

Present: - Mr. Arjun Kundra, Ld. Counsel for the complainant
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the
respondent.

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 apartment along with interest as applicable.

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 09.06.2009 by paying Rs 2,00,000/-

.An allotment letter dated 06.10.2011 was issued vide which unit No. PE-95-SF

with 1025 sq. ft. area was allotted to the complainant. Builder Buyer Agreement

was executed on 19.01.2012. In terms of Clause 5.1 of the BBA, possession was

to be delivered within 24+6 months i.e. by 19.07.2014. Complainant has already

paid Rs. 20,47,359.61/- against agreed basic sale price of Rs 19,69,329/-. Fact of

basic sale price of Rs. 19,69,329/-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

of paid amount of Rs. 20,47,359.61/-, complainant has annexed receipts issued

by the respondent to him as Annexure C-5.

3. Further it has been alleged by the 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. Respondent in his reply has admitted allotment of booked unit and

execution of floor buyer agreement in favour of the complainant. Respondent has

not denied the payments made by the complainant while submitting his

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 possession of unit, it has been stated in para 8 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, ld. Counsel of the complainant reiterated his 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 parties as well as have carefully examined their oral arguments while observing and issuing following orders:-

- (i) Basic facts of the matter are undisputed as far as booking of the apartment by the complainant on 09.06.2009, execution of Builder-Buyer Agreement on 19.01.2012 and payment of Rs. 20,47,359.61/- 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 of Rs. 20,47,359.61/- 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 as Annexure C-5 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 of 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 regard to the rate at which interest will be payable for the period of delay caused in handing over

of possession while two members on one side and the Chairman on the other especially for delay of pre-rera period. 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.' 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. 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.

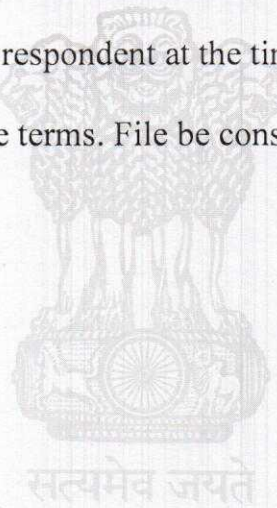
- (v) In view of forgoing reasons, it is decided by the Authority that complainants who have been waiting for last 8 years to have possession of unit should not suffer anymore on account of default on the part of respondent and are entitled to be paid interest on account of the delay caused therein from 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% (10%) for the period ranging from 19.07.2014 (deemed date of possession) to 16.08.2022. 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.14,36,082/- within a period of 90 days from uploading of this order. Complainants will further be entitled to monthly interest of Rs. 15,086/- 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 17,76,245.61/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC



amounting to Rs 2,50,381/- and Rs 20,733/- paid on account of VAT from total paid amount of Rs 20,47,359.61/-. 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.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]