



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1195 OF 2021

Amit Chauhan

....COMPLAINANTS(S)

VERSUS

1. BPTP Parklands Pride Ltd.

2. HDFC Ltd.

3. BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing: 2nd

Present: Shri Ravi Mohla, Counsel for the Complainant through video-conferencing.

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

ORDER: (RAJAN GUPTA-CHAIRMAN)

Captioned complaint has been filed by the complainant seeking relief of possession of the booked apartment along with interest as applicable as per rules, for having caused delay in offering possession and also quash interest charged by respondents.

2. Brief facts as averred by the complainants are that ^{he} they had booked an apartment in the project 'Parkland Elite Floors', Faridabad, promoted by the respondents on 04.08.2009. An allotment letter dated 06.10.2011 was issued vide which unit No. PE-132-SF with 1510 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 15.03.2012. In terms of Clause 4.1 of the BBA possession was to be delivered within 24+6 months i.e., by 15.09.2014. Complainant has already paid Rs. 27,12,743.13/- against agreed basic sale price of Rs. 27,79,095 /-. The fact of basic sale price of Rs. 27,79,095 /- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-8 to the complaint. In support of averment that said amount of Rs. 27,12,743.13/- having been paid complainant has annexed receipts of payments issued by the respondents at page 128-136 of the complaint. Statement of accounts dated 01.08.2020 has also been annexed.

3. Further facts of the matter are that respondent has charged Rs. 27,837/- on account of VAT and Rs. 4,369/- on account of interest. 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 against

respondent to deliver possession of unit along with delay interest, refund of Rs. 4,369/- charged as delayed interest and refund of VAT amount.

4. Respondent BPTP Ltd. has filed an application dated 02.02.2022 under order VII Rule 11 read with section 151 of the Code of Civil Procedure 1908, read with section 31 of the Real Estate (Regulation and Development) Act, 2016 for rejection of plaint. In the said application, it is stated that there is no privity of contract between the complainant and respondent no. 1 that is BPTP Parklands Pride Ltd.

5. Ld. counsel for complainant has filed reply to the said application filed by the respondent. In the said reply it is submitted that builder buyer agreement was executed with the respondents. Respondent no. 1 New Age Town Planners Ltd. has changed its name to BPTP Parklands Pride Ltd as per MCA record. Ld. counsel for the complainant has filed another application dated 08.03.2022 for adding BPTP Ltd., OT-14, 3rd floor, Next door, Parklands Sector 76 Faridabad as respondent no. 2.

6. Respondent no. 2 M/s HDFC Ltd. has filed a reply praying that present complaint be dismissed qua the respondent HDFC Ltd. However, as the bank is a party to the tripartite agreement, therefore if any refund order is passed it has to be first refunded to the Bank.

7. In the hearing dated 09.03.2022, ld. counsel for respondent withdrew his application filed by him on 02.02.2022.
8. No reply has been filed by respondent in this case even after expiry of 4 months from the date of delivery of notice. The notice was delivered to the respondent on 28.10.2021. Two opportunities have already been given to the respondent to submit their reply but they have failed to file reply. Accordingly, respondent's defence is strike off for reason of non-submission of reply.
9. During the course of hearing today the ld. Counsel of complainant reiterated their written submissions and prayed for relief as cited in para 3 above.
10. Authority observes and orders as follows:
- (i) Basic facts of the matter are undisputed that the apartment was booked by the complainant on 04.08.2009 and Builder-Buyer Agreement was duly executed. Complainant has made payment of Rs. 27,12,743.13/- to the respondents as is evident from Annexure C-10 annexed with the complaint. Sufficient notice was given to respondent for filing reply but respondent has chosen not to file the same. Non filing of reply by the respondent even after 4 months amounts to admission. Ld. counsel for the respondent has also not argued the case and made a statement that occupation certificate of this project is yet to be applied.



Facts of the matter have been adequately proved by complainant by placing relevant documents in support of the claim. Admittedly builder buyer agreement was executed on 15.03.2012 and due date of possession was 15.09.2014. Respondent has failed to offer possession within the timelines promised.

Proviso to section 18(1) of RERA Act provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rates as may be prescribed. Complainant in this case wish to remain in the project, therefore complainant is entitled to possession along with upfront delay interest and monthly interest till the date of actual handing over of possession. These are statutory rights of the complainant and cannot be denied to him.

(ii) A delay of more than 8 years has already been caused. This fact of inordinate delay having been caused entitles the complainant to upfront payment of delayed interest amounting to Rs. 16,19,786/- within a period of 90 days from uploading this order. This delay interest has been for the period from the due date of possession till the date of passing this order i.e 15.09.2014 to 09.03.2022 in terms of Rule 15 of HRERA Rules, 2017 i.e @ 9.30%. The complainants will further be entitled to monthly interest of Rs.



18,966/- from the date of passing this order till the date a valid and lawful offer of possession is made.

(v) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 23,26,098/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs. 3,86,644.2/-. The amount of such taxes is 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 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 collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

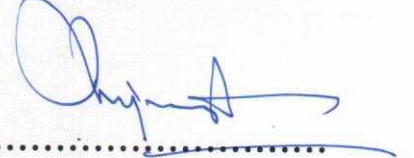
It is added that if any lawful dues remain payable by the complainants to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

11. Respondent is directed to offer fresh possession to the complainant along with statement of accounts as per the principles laid down in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd duly adjusting the amount



of delay interest payable to the complainant within 30 days of uploading this order.

Disposed of in above terms. File be consigned to record room.



RAJAN GUPTA
(CHAIRMAN)



DILBAG SINGH SIHAG
(MEMBER)

