



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 895 OF 2021

Ashish Kumar Kandhwey & another

....COMPLAINANT(S)

VERSUS

M/s BPTP Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing:28.04.2022

Hearing:4TH

**Present: -Mr. Vikas Chaudhary, Ld. Counsel for the complainant.
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the
respondent**

ORDER (DILBAG SINGH SIHAG-MEMBER)

While perusing case file it is observed that captioned complaint has been filed by the complainant for seeking relief of possession of the booked apartment along with permissible interest for delay in offering possession.

2. Brief facts as averred by the complainants are that they had purchased allotment rights of unit no. P-9-03-FF having area 876 sq ft situated in respondent's project namely 'Park Elite Floors, Faridabad from original allottee namely Ms. Surbhi Saroyan vide sale letter dated 16.05.2013. Said unit was booked by the original allottee on 17.05.2009 by making payment of Rs 2,00,000/-. Builder buyer agreement was executed between the original allottee and respondent on 27.04.2010 and in terms of clause 4.1 of it, possession was supposed to be delivered upto 27.10.2012 (24+6 months). Complainants have already paid Rs. 23,85,565.15/- against agreed basic sale price of Rs. 16,08,004 /-. The fact of basic sale price of Rs. 16,08,004/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-1 to the complaint. In support of the averment that said amount of Rs. 23,85,565.15/- has been paid the complainants have annexed a statement of account dated 27.04.2020 issued by the respondents to the complainants. The complainants have, however, submitted receipts of only Rs 5,85,657/-.The said statement of accounts and receipts has been made part of the complaint and annexed as Annexure C-8.

3. Further facts of the matter are that respondents offered possession of the booked apartment to the complainants on 23.11.2019. But said offer of possession was conveyed with an additional demand of Rs.3,88,864/-. Complainants alleged that they did not accept said offer of possession given by the respondent on account of wrongful additional demand of Rs. 3,88,864/-

made by the respondents; besides offer was without obtaining occupation certificate of the building from authorities concerned of the State Government. Further, respondent had not incorporated the interest payable to them for delay of more than 7 years in offering the possession. Therefore, complainants have sought relief of possession of booked apartment, quashing of illegal demands pertaining to club membership charges, maintenance charges, cost escalation and enhanced external development charges and payment of admissible delay interest.

4. Respondents in their reply have admitted allotment of booked unit in favor of complainant and execution of builder buyer agreement. Respondents have also not denied the payments made by the complainants, while submitting 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) The respondents have denied the averments made by complainants in general terms, inter-alia alleging mis-joinder of parties.
- (iii) 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.

- (iv) Regarding possession, it has been stated that possession of the unit was offered on 23.11.2019 alongwith demand of Rs 3,88,864.51/- against which amount of Rs 2,80,864.51 was paid by complainant in December, 2019 but amount of Rs 1,08,000/- raised on account of stamp duty charges was not paid. Due to default of said payment, respondent was not able to initiate the process of handing over of physical possession.
- (v) The respondents had applied for grant of Occupation Certificate in November, 2019 which is yet to be received.
5. During the course of hearing today, Id. Counsel of the complainants reiterated his written submissions and prayed for relief as cited in para 3 above.
6. Respondents, on the other hand, stated that their project is completed. They had applied for grant of occupation certificate in November, 2019. It is the State Government authorities who has been delaying grant of occupation certificate. Project is ready to be occupied. Further, additional demands made by respondents are fully justified. Sh. Hemant Saini, learned counsel for the respondents further argued that respondents are ready to refund entire payment made by the complainants if complainants desires so. He further argued that this is a completed project but State Government authorities have been delaying in grant of occupation certificate. Respondents are ready to offer possession of the allotted unit or alternatively they are ready to refund the money paid by complainants along with interest.



7. 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 that apartment was booked by the original allottees on 17.05.2009 and Builder-Buyer Agreement was duly executed on 27.04.2010 and complainants have made payment of Rs. 23,85,565.15/- to the respondents which is evident from the statement of account dated 27.04.2020. Respondents had issued an offer of possession on 23.11.2019 but without obtaining an occupation certificate. Respondents alleged that they had applied for grant of occupation certificate in November, 2019 but the same has not been granted.
- (ii) Respondents have not cited any reason as to why occupation certificate has not been granted to them. They have not brought on record any correspondence having been exchanged between them and the department to prove that project was otherwise complete and habitable in all respect. It is the responsibility of the respondents to complete all formalities for obtaining occupation certificate. It is to be presumed that there must have been some deficiencies in the application for grant of OC as the State Government has not granted it for last 3 years. For such deficiencies, no liability can be cast upon the



complainants. Complainants are entitled to get completed and duly certified apartments.

- (iii) Authority is of the view that receipt of occupation certificate is an important milestone in the life span of a project. Occupation certificate establishes that building in question has been constructed in accordance with the approved plans and norms. It further proves that all legal formalities have been completed in respect of the project and no hindrance or liability would be faced by the allottees. It also certifies that requisite certificates of fire safety, structural safety certificates, electrical plans etc. have been obtained.

Other side of the proposition is that none of the aforesaid statutory conditions are certified to have been fulfilled if an occupation certificate has not been received. Without such a certificate, there is no guarantee that the rights of the allottees shall be fully safeguarded and they will not face any problem in getting conveyance deed executed in their favour.

Allottees however may choose to take possession of an apartment which has not yet received occupation certificate at their own will, choice or risk, but an allottee cannot be forced to occupy an apartment in a project without having received occupation certificate. In other words, it is a choice available to the allottee to accept possession of such apartment or not. Allottee has an inalienable right



that his apartment has been certified as fit to be occupied by relevant authorities of the State Government. Allottee is very much within his right to refuse possession of an apartment in respect of which occupation certificate is yet to be received.

- (iv) Further, consequence to the above proposition is that an offer of possession made without obtaining occupation certificate cannot be treated as a good and lawful offer of possession. Accordingly, his right to get delay interest will continue till he receives proper and lawful offer of possession duly supported with occupation certificate.
- (v) Admittedly, in this case occupation certificate has not been received. Respondents on the other hand have offered possession without obtaining occupation certificate and have raised additional demand of Rs 3,88,864/- which was disputed by the complainants. Complainants were not liable to accept such illegal offer of possession and make payment of additional demands without project having received occupation certificate.
- (vi) 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 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 in 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.

- (vii) 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 the allottee has an

option either to seek refund of the amount paid along with interest or to continue with the project for seeking possession, but could demand monthly interest for the entire period of delay. The Authority observes 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 complainants with interest cannot be entertained.

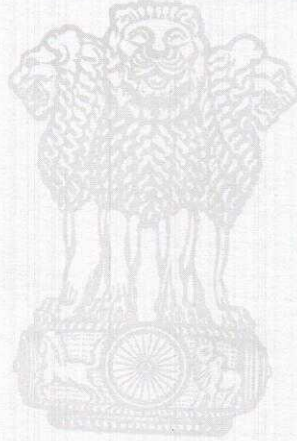
- (viii) In view of above findings, Authority quashed offer letter dated 23.11.2019 vide which additional demand has been made on the ground that this did not include in it the interest payable to the complainants on account of delay of more than 9 years. In fact, project is still not complete as it has not yet received occupation certificate.
- (ix) Respondents are directed to send a fresh offer of possession to the complainants after receipt of occupation certificate in terms of principles already decided in complaint no. 113/2018-Madhu Sareen vs BPTP Ltd. They should also issue them a fresh statement of account incorporating therein amount of delay interest and lawful and justified demands as per Builder Buyer Agreement. If the complainant feels aggrieved by such statement of account they will be at liberty to approach this Authority by filing a fresh complaint.

- (x) Complainants have only attached statement of accounts dated 27.04.2020 as proof of having paid amount of Rs 23,85,565.15/- and receipts of Rs 5,85,657/- are attached with complaint. An e-mail dated 16.05.2022 was written to the complainants to submit all receipts of balance payments to verify the date when such payments were made to enable the Authority to calculate payable interest thereon. The complainants have submitted the receipts of Rs. 23,85,565.15/-.
- (xi) A delay of more than 9 years has already been established which entitles the complainant to upfront payment of delayed interest amounting to Rs. 16,07,338/- within a period of 90 days from uploading this order. This delay interest has been got calculated from the Accounts branch of the Authority for the period from due date of possession till date of passing this order, i.e from 27.10.2012 to 28.04.2022 in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.40%. Complainants will further be entitled to monthly interest of Rs. 16,805/- from the date of passing this order till the date a valid and lawful offer of possession is made.
- (xii) Delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 21,75,068.86/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,20,834.29/- , Rs 19,222/- paid on account of VAT and Rs 70,440/- paid on account of EEDC from total

paid amount of 23,85,565.15/-. The amount of such taxes is not payable to the builder 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 then interest thereon becomes payable only by the respondent.

(xiii) It is also observed that if any lawful dues remained payable by the complainants to the respondent, the same would be demanded by the respondent at the time of offer of possession.

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



सत्यमेव जयते

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]