



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 123 OF 2022
Bir Bahadur Singh And Kanti DeviCOMPLAINANT(S)

VERSUS

M/s BPTP Ltd. & Anr.

.....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 31.05.2022

Hearing: 2nd

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

ORDER (RAJAN GUPTA-CHAIRMAN)

Captioned complaint has been filed by the complainants seeking relief of possession of the booked apartment along with interest as applicable as per rules for having caused delay in offering possession.

2. Brief facts as averred by the complainants are that they had booked an apartment in an under construction project 'Park Elite Floors', sector -77, Faridabad being promoted by the respondents on 15.05.2009 by paying Rs 2,50,000/-. An allotment letter dated 13.05.2009 was issued vide which unit No.

PE-305-GF with 1371 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 07.03.2012. In terms of Clause 5.1 of the BBA possession was to be delivered within 24+6 months i.e. by 07.09.2014. Complainants has already paid Rs. 28,15,463.99/- against agreed basic sale price of Rs 26,44,399/-. The fact of basic sale price of Rs. 26,44,399 /- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure P-4 to the complaint. In support of the averment that said amount of Rs. 28,15,463.99/- has been paid, complainants has annexed receipts issued by the respondents to them. The copies of said receipts have been made part of the complaint and annexed as Annexure C-5.

3. Further it has been alleged by the complainants 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. Respondents in their reply have admitted allotment of booked unit in favour of the complainant, They have also admitted that said Floor Buyer Agreement had been executed. Respondents have not denied the payments made by the complainant, They hve submitted as follows:-

- (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 10 and 11 of reply that construction work of the unit is complete and possession will be handed over shortly to the complainants.

5. During the course of hearing today, ld. Counsel of the complainants reiterated their 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 respondents are ready to offer of possession of the allotted unit or alternatively they are ready to refund the money paid by complainant 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 the apartment was booked by the complainants on 15.05.2009 and Builder-Buyer Agreement was duly executed on 07.03.2012 and complainants has made payment of Rs. 28,15,463.99/- to the respondent. Possession of booked unit has not been offered by respondent till date. Respondent, said that construction



of unit is complete and possession would be handed over shortly to the complainants.

- (ii) There is no denial to the fact of Rs. 28,15,463.99 /- having been paid by the complainants to the respondents. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainants. The copy of said receipts has been made part of the complaint and annexed as Annexure C-5.
- (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 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.

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 with 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.

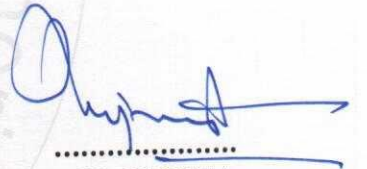
- (iv) The Authority observes that in the event of a project not being completed within reasonable time, a right has been given to the allottees by Section 18 of RERA Act under which the allottee has an option either to seek refund of the amount paid along with interest or to continue with the project 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 complainant, with interest cannot be entertained.

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amounting to Rs 3,18,468/- and Rs 25,368/- paid on account of VAT from total paid amount of Rs 28,15,463.99/-. 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 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.

(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]