



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 617 OF 2021

Ruma Tanwar

....COMPLAINANTS(S)

VERSUS

BPTP Parkland Pride Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 31.05.2022

Hearing: 6th

Present: Shri Jai Prakash Bhatti, Ld. Counsel for the Complainant through VC.

Shri Hemant Saini, Ld. Counsel for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. On the last date of hearing dated 12.05.2022 a detailed and reasoned order was passed disclosing tentative view of the Authority. Said order is being reproduced below.

1. Captioned complaint has been filed by complainant 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 the project 'Parklands Pride' Sector – 77 and 78,

Faridabad, promoted by respondents, on 28.07.2012. An allotment letter dated 10.08.2012 was issued vide which unit No. PA-133-SF with 1750 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 19.12.2012. In terms of Clause 5.1 of the BBA possession was to be delivered within 30+6 months i.e., by 19.12.2015. Complainant has already paid Rs. 62,87,831.33/- against agreed basic sale price of Rs. 63,18,008/-. The fact of basic sale price of Rs. 63,18,008/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure P-3 to the complaint. In support of the averment of payment of said amount of Rs. 62,87,831.33/- complainant has annexed receipts of payments as Annexure P-1 and P-4 in the complaint.

3. It has been alleged by the complainant that respondent was supposed to deliver possession after obtaining Occupation Certificate by year 2015 but he has not offered it till date. Further grievances of the complainant are many folds relating to non-completion of electricity services, sanitary and finishing work not completed; charging of Rs. 77,318/- for club without construction of the same; Rs. 500/- deducted as cheque bouncing; Rs. 5,82,500/- as development charges; Rs. 4,455/- as interest on delayed payment; VAT charges when respondent is already charging GST; increase in basic sales price from Rs. 63,18,008/- to 65,09,353.87/-; Rs. 3,83,000/- for stamp duty which is payable at the time of execution of conveyance deed.

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Aggrieved by the respondent's conduct, complainant sent a legal notice dated 01.10.2020 to the respondent thereby calling the respondents to deliver possession of his booked unit along with interest and compensation but respondent failed to reply to said legal notice.

4. Present complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit along with delay interest and to quash illegal demands.

5. Respondents in their reply have admitted allotment of booked unit in favor of the complainant. They have also admitted that said Floor Buyer Agreement had been executed. Respondents have admitted payments made by the complainant while submitting following submissions: -

(i) Present complaint is for the unit in respondent's registered project namely Parkland Pride bearing no. 187 of 2019 valid till 31.12.2022.

(ii) Complainant has already been offered possession on 16.07.2018 after obtaining Occupation Certificate on 20.06.2018. It is the complainant who has failed to take possession of his unit. Respondent had terminated the allotment of complainant by sending termination/cancellation notice dated 19.11.2018, 17.08.2019, 10.12.2019, 19.02.2020 and 06.05.2020 after giving enough time to remit his dues.

(iii) Complainant is a defaulter under section 19(6) and 19(7) of RERA Act.



- (iv) Possession timelines in the agreement is tentative in nature and dependent on clause of force majeure.
- (v) With respect to charges impugned by the complainant, respondent has stated that these charges are as per the agreement and complainant had agreed to pay all these charges.
6. During the course of hearing today the ld. Counsel of both parties reiterated their written submissions and complainant has prayed for relief as cited in para 3 above.
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 complainant on 28.07.2012 and Builder-Buyer Agreement was duly executed and there is no denial to the fact of Rs. 62,87,831.33/- having been paid by the complainant to the respondents. Payment of amount of Rs. 62,87,831.33/- is further adequately proved from the receipts issued by the respondents to the complainant. The copy of said receipts has been made part of the complaint and annexed as Annexure P-1 and P-4.
- (iii) Now coming to the legality of the charges impugned by the complainant. Authority observes and orders as follows:
- (a) Club membership charges: If the club has come into existence, and the same is operational or is likely to become operational soon the demand of Rs. 77,318/- is justified. However, if the club building is yet to be constructed this demand is not justified, respondents should prepare a plan for completion of the club and



demand money from members in instalments up to the date of completion of the club.

(b) Cheque bouncing charges: These charges can be charged only when cheque had actually been bounced. Respondent is directed to submit proof regarding the same failing which these charges will be quashed.

(c) Development charges: These amounts are not payable to the builder rather required to be passed on by the builder to the concerned department/authorities. So, this amount will be payable by the complainant.

(d) VAT: Any taxes including VAT or statutory demands prevalent at the time of executing agreement will be payable by the complainant.

(e) GST: Deemed date of possession is 19.12.2015 in the present case. Admittedly, the delivery of the apartment has been delayed by more than 3 years. Had it been delivered by the due date or even with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is the wrongful act on the part of respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of the complainants in this regard. For the inordinate delay by the respondent in delivering the apartments, the incidence of GST should be borne by the respondent only

(f) Increase in basic sales price: Complainant has alleged that basic sales price has been increased from Rs. 63,18,008/- to 65,09,353.87/-. On perusal of the statement of account annexed with offer of possession in written statement at page 125 filed by

the respondent, it is revealed that area of the unit has been increased from 1750 sq. ft to 1803 sq. ft thereby increasing approx. 3 percent of original area. An area of 53 sq. ft. is increased and respondent has charged for the same as per the agreement only.

Area	Price(per sq ft)	Basic sales price
Original area- 1750 sq. ft.	3610.29	63,18,008/-
Increased area- 1803 sq. ft.	3610.29	65,09,352.87/-

Therefore, respondent is justified in increasing the basic sales price.

(g) Stamp duty: Complainant is at liberty to purchase his own stamp papers at the time of execution of conveyance deed. Payment on this account need not be made to the respondent.

(iv) Offer of possession: Complainant has concealed the fact that possession has already been offered to him in 2018. It is the respondent who has annexed letter of offer of possession (Annexure R-16) and a copy of Occupation Certificate (Annexure R-15). Admittedly possession has already been offered to the complainant on 16.07.2018 after obtaining Occupation Certificate on

20.06.2018. Complainant has not taken over the said offer. The offer of possession was given to the complainant at the time when the project had received the occupation certificate, so the offer was valid and complainant was obliged to accept the same.

(v) The possession as per BBA was required to be delivered latest by 19.12.2015 and since the respondent could not offer possession by that date, complainant is entitled for delay interest from 19.12.2015 to the date on which the project had received the occupation certificate i.e., on 20.06.2018.

2. Respondent was directed to submit requisite proof with regard to cheque bouncing charges however no proof with respect to same has been submitted. So, Authority decides that respondent cannot charge any amount towards cheque bouncing charges. No additional facts have been put by ld. counsels for both the parties. Therefore, view taken by the Authority in the order dated 12.05.2022 stands confirmed.

3. In terms of order dated 12.05.2022 upfront delay interest works out to Rs. 13,31,025/- and it is held payable by the respondent to the complainant.


The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 55,89,002.4/- Said total amount has been worked out after deducting charges of taxes paid by complainant on account of development charges amounting to Rs.6,98,828.74/-. The amount of such charges 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.

11. Respondent shall issue statement of accounts in terms of directions issued in this order within 30 days duly incorporating therein amount of delay interest of Rs. 13,31,025/- and complainant shall take possession of his unit after paying balance dues, if any within 30 days of receipt of statement of accounts.

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)