



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1178 of 2021

Meenu Munshi & Pranashar Munshi

....COMPLAINANT(S)

VERSUS

M/s BPTP Ltd & Anr.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 01.06.2022

Hearing: 4th

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 applicable 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 Floor', sector -77, Faridabad being promoted by respondents on 26.05.2009 by paying Rs 2,00,000/-

. An allotment letter dated 24.12.2009 was issued vide which unit No. H-6-20-GF with 1022 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 18.09.2010. In terms of Clause 4.1 of the BBA possession was to be delivered within 24+6 months i.e. by 18.03.2013. Complainants have already paid Rs. 24,49,611.03/- against agreed basic sale price of Rs 20,55,999/-. The fact of basic sale price of Rs. 24,49,611.03/- 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 that said amount of Rs. 24,49,611.03/- (however, correct figure is Rs 24,49,811.03/- as evident from statement of account) has been paid, complainants have annexed receipts issued by the respondents to them and statement of accounts dated 14.05.2018, copies of receipts and a statement of accounts have been made part of the complaint and annexed as Annexure C-4 and C-5 respectively.

3. Further it has been alleged by complainants that respondent was supposed to deliver possession by year 2013 but he has not offered it till date. Feeling aggrieved, present complaint has been filed by the complainants 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 have 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) That an affidavit cum undertaking dated 19.01.2011 was signed by complainants wherein the complainants had specifically undertaken that they shall have no objection regarding relocation/change/modification of super area of unit and tentative layout/building plans and also undertook not to hold respondent-company liable for the delay due to modification/revision in tentative layout plan during construction of the floor.
- (iv) Regarding possession of unit, it has been stated in para D of reply that respondents are putting all its efforts and endeavouring to complete the construction and handing over of the project at the earliest.
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 possession of any other



alternative unit located in their completed project or they are also 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 the apartment was booked by the complainants on 26.05.2009 and Builder-Buyer Agreement was duly executed on 18.09.2010 and complainants has made payment of Rs. 24,49,811.03/- to the respondent. Possession of booked unit has not been offered by respondent till date. Respondent said that they are putting all its efforts to complete the construction of the unit and handing over of the project at the earliest.
- (ii) There is no denial to the fact of Rs. 24,49,811.03/- 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 and statement of accounts dated 14.05.2018 which are annexed as Annexure C-4 and C-5 respectively 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 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.
- (v) The respondent has argued that complainants had signed an undertaking dated 19.01.2011 to not to hold liable the respondent for any delay caused in delivery of possession. Learned counsel for the respondent argued that allottees themselves had given an undertaking that they will not hold respondent responsible for any delay in offer of possession caused due to any act on account of any changes, modifications, revisions in the tentative lay out building plans during construction/completion of the floor. In this regard Authority observes that in this case delay of more than 9 years has already taken place and the complainants who have already paid full basic sale price is still waiting to have possession of his unit. Factual position remains that



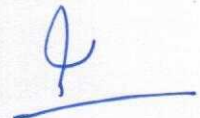
builder buyer agreement was executed on 18.09.2010 and the aforesaid undertaking was also signed on 19.01.2011 i.e. 4 months after the execution of the builder buyer agreement. The Authority observes that firstly it has not been demonstrated by respondents that the delay has occurred due to change of layout plans etc therefore the undertaking will not come into play at all. Secondly, the undertaking executed within 4 months of signing of BBA, for all practical purposes has to be read as an addendum of the agreement itself. Thirdly, the said undertaking is vague and unconscionable and one sided. It was got signed after the allottee had paid about 35% of the basic sale price. After payment of substantial amount, the allottees are left with no choice but to sign the documents as are presented to them by the respondent company. The Authority, therefore, is of considered view that said undertaking will have no effect for mitigating the liability of respondents towards allottee for delay caused in handing over the possession.

- (vi) In view of forgoing reasons, it is decided by the Authority that complainants who have been waiting for last 9 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% (9.5%) for the period ranging from 18.03.2013 (deemed date of possession) to 01.06.2022. Further, monthly interest shall also be payable upto the date of actual handing over of the possession after obtaining occupation certificate.

(vii) A delay of more than 9 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. 18,85,719/- within a period of 90 days from uploading of this order. Complainants will further be entitled to monthly interest of Rs. 16,889/- from the date of passing this order till the date a valid and lawful offer of possession is made to the complainants.

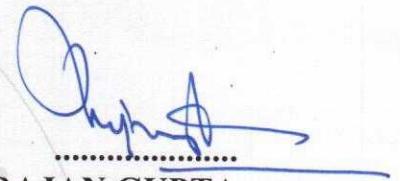
(viii) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 21,62,948.4/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,64,115.21/-, Rs 97,829.42 on account of EEDC and Rs 24,918/- paid on account of VAT from total paid amount of Rs 24,49,811.03/-. 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



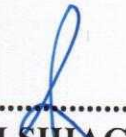
payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.

- (ix) 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.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

