



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1129 OF 2021

Mukesh Juneja and Shabnam Juneja

....COMPLAINANTS(S)

VERSUS

BPTP Ltd and Anr.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 17.05.2022

Hearing: 3rd

Present: Ms. Rishika Arora, Counsel for Complainant through VC
Shri Hemant Saini and Shri Himanshu Monga, Counsels for
Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

The captioned complaint has been filed by complainants seeking relief of possession of the booked apartment along with interest as applicable as per rules for having caused delay in offering possession and refund of club membership charges.

2. Brief facts as averred by the complainants are that they had booked an apartment in the project 'Discovery Park' Sector -80, Faridabad, promoted by respondents. An allotment letter dated 28.02.2012 was issued vide which unit No. L-801, 3 BHK with 2440 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 04.09.2012. In terms of Clause 3.1 of the BBA possession was to be delivered within 36+6 months i.e., by 04.03.2016. Complainants have already paid Rs. 52,45,204/- against agreed basic sale price of Rs. 65,14,800/-. The fact of basic sale price of Rs. 65,14,800/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-2 to the complaint. In support of the averment that said amount of Rs. 52,45,204/- has been paid, complainants have annexed a statement of account dated 22.05.2019 issued by respondents to the complainants.

3. Further, it has been alleged by complainants that respondents were supposed to deliver possession by year 2016 but they have not offered it till date. Club membership charges of Rs. 51,507/- have been taken from the complainants but no club exists at the site. Feeling aggrieved, present complaint has been filed by the complainants seeking direction against respondents to deliver possession of unit along with delay interest and refund of club membership charges.

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4. 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. The respondents however submit as follows: -

(i) That Builder Buyer Agreement with complainants was executed much prior coming into force of Real Estate (Regulation and Development) Act, 2016. (RERA Act in brief). Therefore, agreement executed prior to coming into force of the Act or prior to registration of project with RERA cannot be reopened.

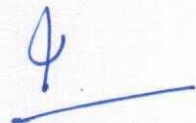
(ii) Complainants have defaulted in making timely payments and are at default in terms of section 19(6) and 19 (7).

(iii) Construction of the project was going on in full swing however it got affected due to NGT orders prohibiting construction activity and Covid-19. Possession timelines have been diluted for reasons beyond control of the respondent.

(iv) Complainants have agreed to pay club membership charges under clause 2.1 of the FBA.

(v) Construction of the unit is going on in full swing and possession will be offered shortly.

(vi) Respondents have denied the payment of Rs. 52,45,204/- having been received but has annexed receipts of payments of Rs. 48,19,174.45/-.



5. During the course of hearing today Id. Counsels of both parties reiterated their written submissions and complainant has prayed for relief as cited in para 3 above.

6. 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 allotted to the complainants on 28.02.2012 and Builder-Buyer Agreement was duly executed on 04.09.2012. It is evident from statement of accounts dated 22.05.2019 that complainants have made payment of Rs. 52,45,204/- to the respondents. Respondents in their reply have stated that construction is going on in full swing but possession has not been offered to the complainants till date.

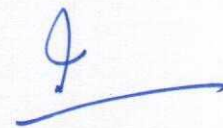
(ii) There is no denial to the fact of Rs. 52,45,204/- having been paid by the complainants to the respondents. Respondents have also admitted this payment in the statement of accounts issued by respondents dated 04.09.2012. (Annexure C-4 of complaint). Payment of an amount of Rs. 48,19,174.45/- is further adequately proved from the receipts issued by the respondents to the complainants. The copy of said receipts has been made part of the written statement filed by the respondent.



(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 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.

(iv) The Authority observes that the respondents have severely misused its dominant position. They executed the BBA in the year 2012. Due date of possession was March 2016. Now, even after lapse of 6 years respondent is not able to offer possession to the complainant. Respondents have not even specified as to when respondents will be in a position to handover possession of booked apartment. Complainants however are interested in getting the possession of their apartment. They do not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondents are liable to pay, monthly interest for the entire period of delay caused at the rates prescribed.

Admittedly, the respondents in this case have not made any offer of possession to the complainants till date nor he has obtained the occupation certificate of the project in question. So, the Authority has no hesitation in concluding that the complainants are entitled for the delay interest from the deemed date i.e., 04.03.2016 to the date on which a valid offer is sent to her after obtaining occupation certificate.

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(v) Complainants have not annexed any receipt of payment and is relying on statement of accounts dated 22.05.2019. An email dated 10 June 2022 was sent to the complainants for submission of payment receipts by the complainant. No receipts however have been submitted by the complainants. Respondents however have submitted receipts of an amount of Rs. 48,19,174.45/-

In the absence of receipts Authority will decide the case on the basis of best evidence placed on record by the complainant. On an amount of Rs. 29,38,204.2 (after deducting development charges Rs. 78,349/-) delay interest will be calculated from deemed date of possession i.e., 04.03.2016 till the date of order i.e., 17.05.2022. On amount of Rs. 15,01,162/- (after deducting development charges Rs. 2,66,498/- and VAT Rs. 34,961.25/-) from their respective date of payments till the date of order i.e., 17.05.2022. On remaining amount of Rs. 1,21,775/- (after deducting development charges Rs. 3,04,254.6/-) delay interest will be calculated from statement of accounts dated 22.05.2019 till the date of order i.e., 17.05.2022.

Accordingly, the respondents are liable to pay the upfront delay interest of Rs. 23,80,145/- to the complainants towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 45,61,141.2/- monthly interest of Rs. 37,989/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that

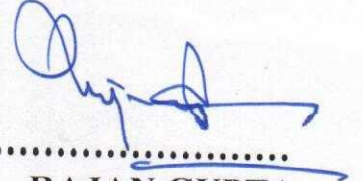
the complainants will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 45,61,141.2/- . Said total amount has been worked out after deducting development charges amounting to Rs 6,49,101.60/- and VAT amounting to Rs. 34,961.25/- from total amount of Rs 52,45,204.05/- paid by complainant. These amounts are not payable to the builder and are rather required to be passed on by the builder to the concerned department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable 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 and development charges collected by a builder cannot be considered towards determining the interest payable to the allottee on account of delay in delivery of possession.

7. The Authority further orders that while upfront payment of Rs. 23,80,145/- as delay interest shall be made within 90 days of uploading of this order on the website of the Authority, the monthly interest of Rs. 37,989/- will commence w.e.f. 17.05.2022, payable on 17.06.2022 onwards.



Disposed of in above terms. File be consigned to record room after uploading order on the website of the Authority.



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RAJAN GUPTA
(CHAIRMAN)



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DILBAG SINGH SIHAG
(MEMBER)

