



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1157 OF 2020

Promila Arora

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 10.05.2022**

**Hearing: 8<sup>th</sup>**

**Present:** Shri Rajan Hans, Ld. counsel for the complainant through video-conferencing.  
Shri Hemant Saini and Shri Himanshu Monga, Ld. counsels for the Respondent.

#### **ORDER: (RAJAN GUPTA -CHAIRMAN)**

1. This case was fixed for settlement. Learned counsel for the complainant informed that nothing is being offered to them from the last six months and respondent is dragging the case. Authority is therefore deciding the case on merits.

2. Brief facts as averred by the complainants are that original allottee Mr. Suraj Bhan executed a floor buyer agreement with respondent on 06.12.2010 for a plot bearing no. 36, Block W-11 admeasuring area of 302 sq. yds in the project "BPTP Parklands" Faridabad. Deemed date of possession as per agreement was 24 months from the sanction of service plans. Original allottee had paid Rs. 28,10,563/- against the basic sales price of Rs. 24,91,500/-. Present complainant Ms. Promila Arora purchased said plot from original allottee vide agreement to sell dated 27.12.2010. Respondent issued endorsement letter dated 15.01.2011 in favor of the complainant. Complainant paid an amount of Rs. 4,15,552/- towards EEDC on 06.07.2012. In total an amount of Rs. 32,26,115/- has been paid to the respondent against the said plot. It is alleged that work of the colony is not complete and is far from being over. The fact of basic sale price of Rs. 24,91,500/-having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure 1 to the complaint. Despite lapse of agreed time period for delivery of apartment, respondents have still not offered possession to the complainant.

3. Complainant is seeking relief of possession of booked plot or any other plot and payment of admissible delay interest.



4. Respondent in his reply has admitted endorsement of booked plot in favour of the complainant and also payment of Rs. 32,26,115/-. Respondent has also admitted that said Floor Buyer Agreement had been executed. The respondent however submits as follows: -

(i) Since the unit in question is an independent floor measuring 127.37 sq. mtrs. As per section 3(2)(a) of RERA Act, registration of the project was not required for an area proposed to be developed that does not exceed 500 sq. meters, therefore it does not fall within jurisdiction of the Authority.

(ii) 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.

(iii) Endorsement was made in favor of complainant on 15.01.2011 and any delay penalty if arising shall be calculated from the date of endorsement to the present allottee. Supreme court has held that subsequent transferee cannot claim the benefits of original allottee as he/she purchases the interest in property in spite of being aware of the status of the project.



(iv) Possession of the plot was dependent on the force majeure circumstances and timely payment of each instalment. Respondent is making all the endeavor to handover possession to the complainants.

5. During the course of hearing today the ld. Counsel of complainant reiterated their written submissions as already discussed in para 2 and 3 of this order. Ld. counsel for the respondent reiterated his written submissions discussed in para 4 of this order. Further, he stated that respondent is in the process of offering an alternate unit to the complainant.

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) Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floor measuring 500 Sq. yds., it is observed that the respondent is developing a larger colony over the several acres of land. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. The argument of the respondent is that since the floor does not exceed 500 Sq. yds. Therefore, the Authority has no jurisdiction is totally untenable and unacceptable. Promoter is a developer of a large project and this



floor is one part of the large number of floors. Jurisdiction of the Authority extends to entire project and each plot of the said project.

(ii) 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.

(iii) Regarding question of law posed by the respondent that the delay interest is not admissible in respect of a subsequent allottee, the Authority is unable to agree with the contention of the learned counsel for the respondent. In this case, original allottees and respondent executed an agreement on 06.12.2010, thereafter the complainants stepped into the shoes of the original allottees on 27.12.2010, i.e just twenty-one day after execution of BBA. The complainants are not claiming their right through the previous allottee. Moreover, in terms of definition of 'allottee' provided under Section 2(d) of RERA Act,2016 the person who has subsequently acquired allotment of unit through sale, transfer or otherwise i.e subsequent allottee is duly covered in it. So, for all practical purposes, the present complainants are like an original allottee. Section 2 (d) of RERA Act,2016 is reproduced below for reference:-

***Allottee-** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be has been allotted or sold (whether as freehold or leasehold)*

  
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*or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom the plot or apartment is given on rent.*

It is pertinent to mention here that complainants had stepped into shoes of original allottees on 27.12.2010 after execution of builder agreement dated 06.12.2010. Said transfer was duly endorsed by respondent on 15.01.2011. In terms of said builder buyer agreement deemed date of possession comes to 06.12.2012. The respondent was duty bound to deliver possession within stipulated time but he has failed in his duty. There is no reasonable justification/explanation has been provided by the respondent for delay of 10 years. Even today no specific timeline has been committed by the respondent. Status mentioned in the reply is that respondent is making every endeavour to handover possession of unit which implies that project is not complete. This act is a serious default on part of respondent and in these circumstances the argument of respondent cannot be accepted.

(iv) Arguments in respect of force majeure conditions also cannot be accepted and no such conditions have been shown to be applicable. Nothing extraordinary have taken place between the date of executing the BBA and due



date of offer of possession, and for that matter even till now has been shown to have happened. Respondents are defaulting on multiple counts.

(v) Deemed date of possession is 24 months from the sanction of service plans simultaneous to the execution of sale deed. This clause is unconscionable. If the service plans had not been approved, respondents had no right to seek full money from the complainants. Therefore, date of possession shall be considered 2 years from the date of execution of plot buyer agreement. It works out to 06.12.2012.

(vi) Admittedly the builder buyer agreement was executed between the parties on 06.12.2010 and deemed date of possession was 06.12.2012. Respondent issued the endorsement letter in favor of the present complainant on 15.01.2011. Respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation certificate of the project in question. Complainant, in his prayer has prayed for same or alternate plot and Id. counsel for the respondent has also made a statement that respondent is in the process of offering alternate plots to the complainant. Authority is of view that respondent has failed in his duty to deliver possession within the stipulated time and today also he is not in a position to handover the possession of the booked unit. For the said faults on the part of respondent, complainant should not suffer so it is decided that respondent should pay upfront delay interest along with monthly





interest till the date on which a valid offer is sent to him after obtaining occupation certificate of originally allotted plot or any alternate plot in vicinity at same price.

(vii) Delay interest- Respondent has admitted to have been received Rs. 32,26,115/- and date of payments. The possession as per plot buyer agreement was required to be delivered latest by 06.12.2012 and since the respondent could not offer possession by that date, the complainant is entitled for delay interest from 06.12.2012 to the date of order i.e., 10.05.2022.

Delay interest is calculated by the Authority in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.40%) for the period ranging from deemed date of possession (06.12.2012) till date of order (10.05.2012). Such interest works out to Rs. 24,92,099/- and it is held payable by the respondent to the complainant.

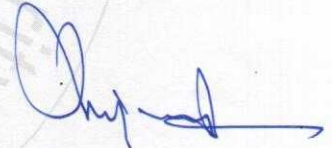
The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 28,10,563/-. Said total amount has been worked out after deducting EEDC amounting to Rs. 4,15,552/-. This amount is not payable to the builder and is rather required to be passed on by the builder to the concerned 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 etc. collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

7. Authority orders that respondent shall issue offer of the same or alternate plot along with statement of accounts after obtaining occupation certificate in respect of the apartment. The Authority further orders that while upfront payment of Rs. 24,92,099/- 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. 23,162/- will commence w.e.f. 11.05.2022, payable on 11.06.2022 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)**