



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1165 OF 2021

Ritus Umesh and Umesh Kumar Prabhakar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 10.05.2022**

**Hearing: 4<sup>th</sup>**

**Present:** Shri Umesh Kumar Prabhakar, Counsel for the complainant.  
Shri Hemant Saini and Shri Himanshu Monga, Counsel for the  
Respondent.

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

1. Case of the complainants is that they had booked unit no. AVE-28-SF measuring 1402 sq. ft. in respondent's project Park-81, Sector 81 Faridabad

on 16.03.2010. Said unit was allotted to them on 16.03.2010. Floor buyer agreement was executed between the parties on 23.09.2010. Deemed date of possession was 22.03.2013. Complainants had opted for construction linked plan. They had paid an amount of Rs. 36,765,02.04/- against the basic sales price of Rs. 27,84,007/- till 19.06.2015.

Respondent had offered possession to the complainant on 18.05.2015 along with a demand of 8,55,078.03/-. Complainant alleges that said offer was not valid as it was without obtaining occupation certificate. Complainants had sent a protest e-mail dated 17.06.2015 to the respondent stating that payment sought in letter of offer is premature and unwarranted and respondent has not obtained OC for his unit and hence cannot deliver lawful possession to them. Complainants had also sent various e-mails seeking copy of occupation certificate from the respondent from 24.06.2015 to 24.07.2017. Last e-mail was written by complainants on 15.05.2021. Complainants alleges that respondent has wrongly levied charges on account of cost escalation @ 99.30 per sq. ft. but basis of the calculations has not been placed on record by the respondent; Rs. 50,000/- has been demanded as club membership charges but there is no club in existence; Rs. 91,209.25 has been demanded as electrification and STP charges but respondents are required to provide external electrical infrastructure in accordance with Dakshin Haryana Bijli Vitran Nigam policy and therefore



demand for electrification charges is illegal; Respondent has demanded EEDC along with the offer of possession dated 15.05.2013 but the demand of EEDC has been stayed by Hon'ble High Court of Panjab and Haryana vide order dated 19.03.2013. Complainants have also stated that they do not wish to sign indemnity cum undertaking attached with offer of possession as annexure-F.

2. Complainants have sought relief of delay interest as per Rule 15 and possession after obtaining occupation certificate, execution of conveyance deed, and issuing direction to the respondent restraining them from demanding execution of indemnity cum undertaking. They have further sought cancellation of demands made in respect of cost escalation, club membership charges and refund of the amount charged on account of EEDC and external electrical infrastructure. They have sought direction against respondents to bear burden of GST and the amount already charged on account of same be refunded along with interest. Further, direction to respondent to charge maintenance only from the date of actual handing over of legal possession to the complainant.

3. Respondent has submitted its written statement. He has submitted that delay in delivery of possession has been caused due to force majeure conditions. Payment of Rs. 36,765,02.04/- made by complainant has been denied and it is submitted that complainants had made huge defaults in making payments. Possession was duly offered on 18.05.2015 after completing

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construction of the unit but complainants have not taken possession of their unit to gain monetary benefits. Respondent had received occupation certificate on 06.10.2018 in respect of the project.

In respect of cost escalation it is submitted that the same has been charged as per terms of agreement; club is under construction and a temporary club is functional; for electrification and STP charges it is submitted that respondents have provided power load as per DHBVN norms; For demand of EEDC it is submitted that it has not been raised after the order passed by Hon'ble Panjab and Haryana High Court; in respect to indemnity cum undertaking it is submitted that complainants were not compelled to execute the same and the only purpose of execution of this deed is to ensure handing over of possession amicably and to complete satisfaction of both the parties. Further, maintenance charges have been raised as per terms of the agreement.

4. On the last date of hearing, complainant Umesh Kumar Prabhakar agitated that respondent had sent offer of possession back in 2015 and no communication in respect to receipt of occupation certificate was ever sent to him by the respondent. He submitted that as per clause 5.4 of agreement, respondent was duty bound to offer a fresh possession or communicate receipt of occupation certificate to the complainants after receiving the same in 2018.



5. Authority has gone through all the facts and circumstances of the matter. It is not a disputed that parties had executed a flat buyer agreement dated 23.09.2010 and respondent was bound to deliver possession by 22.03.2013. Respondent had sent an offer of possession dated 18.05.2015 accompanied with demands towards cost escalation, club membership charges, electrification and STP charges and EEDC and complainants have disputed these demands. Admittedly the occupation certificate was received by the respondent for its project on 06.10.2018 i.e., after 3 years of offering possession to the complainant.

6. The Authority after considering submissions made by both parties decides as follows:

(i) Delay interest- The offer of possession was given to the complainant at the time when the project had not received occupation certificate, therefore neither the offer was valid nor even the complainant was obliged to accept the same. That being so, mere fact that the complainant did not accept the offer will not disentitle him from demanding delay interest which he is otherwise entitled to seek on the paid amount on account of delay in offering the possession.

The possession as per BBA was required to be delivered latest by 22.03.2013 and since the respondent could not offer possession by that date, the



complainant is entitled for delay interest from 22.03.2013 to the date on which the project had received the occupation certificate i.e., on 06.10.2018.

Delay interest has been calculated by office of 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 (22.03.2013) till date of receipt of occupation certificate (06.10.2018). Such interest works out to Rs. 17,24,403/- 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. 33,47,347/- Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC of Rs. 2,10,308/- and Rs. 1,18,847/- paid on account of EEDC from total paid amount of Rs. 36,76,502.04/-. The amount of such taxes 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.



(ii) Cost escalation- Authority has already laid down guidelines for calculation of cost escalation in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd and therefore the respondent shall calculate cost escalation in this case as per said guidelines. Respondent will supply copy of said calculations to the complainant and in case complainant finds some discrepancy therein he will be at liberty to file a fresh complaint to espouse his grievance in that regard

(iii) Club membership charges- Respondent has charged an amount of Rs. 50,000/- for club. It has been submitted by the respondent that club is under construction and a temporary club is functional in the said project. Respondent has admitted that construction of the club is not completed and therefore it is decided that respondent cannot charge this amount from the complainant without completion of the club.

(iv) Electrification and STP charges- Respondent have levied substantial charges on account of "Electrification and STP". Authority observes that this is too vague a head for charging any amount from the complainants. Authority understands that creation of all infrastructure within the colony is included in the consideration agreed upon between the complainants on one hand and the respondent on the other. If respondents are charging any amount towards laying sewage treatment plant (STP) in the colony, the same will not be acceptable at all. Laying of sewerage system is very much a part of the basic infrastructure in

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the colony. The respondents-promoters cannot charge any additional amount in respect of such infrastructure. It will be deemed that the consideration of the apartment will include all expenditure towards the essential infrastructure.

In regard to electrification, the cost of all electrical infrastructure to be installed within the colony is also very much a part of the consideration agreed upon between the parties. For the same logic as in the case of STP, the respondent cannot levy any charges towards laying of electrical infrastructure within the colony.

At this juncture, it is however, observed that all internal infrastructure has to be connected with the external infrastructure to be created by the State Government agencies. The Town & Country Planning Department recovers cost of all external infrastructure from the promoters in the form of EDC. The EDC includes the cost of external infrastructure on account of roads, water supply, sewage treatment, storm water and drainage. The current concept of EDC does not include the cost of external electrical infrastructure. It has to be paid separately by the promoter to the Electricity Department. If the concerned Electricity Distribution Company levies additional charges over and above the charges which could have been anticipated by the promoters, such cost can be distributed proportionately amongst the allottees. A detailed justification in this regard, however, has to be furnished by the respondent developer.





In conclusion, the Authority would hold that the charges on account of electrification and STP charges cannot be allowed. The justification, however, may be furnished in accordance with principles laid down in this para. The respondents shall give detailed justification accordingly in this regard. In case any charges are levied towards the unanticipated cost of electrification.

(v) Enhanced EDC- Complainant has alleged that Respondent has demanded EEDC along with the offer of possession and said demand has been stayed by the Hon'ble High Court of Panjab and Haryana vide order dated 19.03.2013. Respondent has denied the allegation of the complainant and has submitted that demand of EEDC has not been raised after the order passed by Hon'ble Panjab and Haryana High Court. On perusal of the receipts of payments annexed in complaint file, it is revealed that the payment of EEDC had been made by complainants on 30.05.2012. Said receipt is annexed at page 118 of complaint. Hon'ble High Court had passed the stay order in 2013 that is after the payment was made by complainants and therefore the payment of EEDC is not liable to be returned by the respondent and rather respondent is liable to deposit the same to Government Authorities. In case the same has not been deposited with the Government Authorities, it is to be refunded to the complainant.

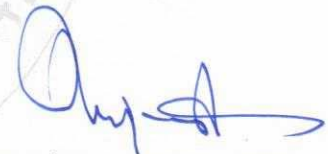
(vi) GST- Admittedly, delivery of apartment has been delayed by more than 5 years. Had it been delivered by the due date or even with some justified period

of delay, incidence of GST would not have fallen upon the buyers. It is the wrongful act of the respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of complainants in this regard. For the inordinate delay caused by respondent in delivering the apartments, the incidence of GST should be borne by the respondent only.

(vi) Maintenance charges- No maintenance charges since actual possession not yet delivered.

6. Respondent shall issue a fresh statement of accounts in terms of directions issued in this order within 30 days duly incorporating therein amount of delay interest of Rs. 17,24,403/- 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)**