



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in
COMPLAINT NO. 96 of 2021

1. Dharamvir Singh
2. Bal Krishan Singh
3. Govind Ram

....COMPLAINANT(S)

VERSUS

1. M/s BPTP Ltd
2. M/s Countrywide Promoters Pvt Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

Date of Hearing: 01.06.2022

Hearing: 7th

Present: - Mr. Anil Gupta, 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 complainants are that an original allottee named Vineet Khurana had booked a plot in project 'Parklands Block-H', sector -84, Faridabad, promoted by respondents, on 25.01.2006 by paying Rs 5,31,250/-. An allotment letter dated 17.10.2006 was issued vide which Plot no. H-12 with 350

sq. yds area was allotted to original allottee. Plot Buyer Agreement was executed on 21.11.2006. In terms of Clause 22.1 of the PBA, possession was to be delivered within 24 months from sanctioning of service plans of entire colony, but as per version of complainants, in para 5 of complaint, respondent was supposed to deliver possession up to 14.03.2014 (24 months from 15.03.2012 date of making last payment). Complainants had purchased allotment rights of booked unit from original allottee vide agreement to sell dated 25.02.2012 which was duly endorsed by respondent on 29.03.2012. An amount of Rs. 40,33,674 has already been paid against agreed basic sale price of Rs. 19,52,475/-. Fact of basic sale price of Rs. 19,52,475/- having been agreed between the parties is endorsed by Builder Buyer Agreement executed between the parties, which has been annexed as Annexure A to the complaint. In support of the averment of amount of Rs. 40,33,674/- having been paid, complainants have annexed statement of accounts dated 16.01.2012 and nomination letter dated 29.03.2012 issued by respondent to the complainant. Said statement of accounts and nomination letter have been annexed as Annexure J and Annexure I of the complaint.

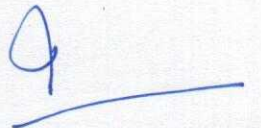
3. Further it has been alleged by complainants that respondent was supposed to deliver possession by the year 2014, but he has not offered it till date. Feeling aggrieved, present complaint has been filed by the complainants seeking direction to the respondent to deliver possession of the unit along with 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) 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) Regarding relief pertaining to delay interest, it has been submitted that complainants are subsequent allottees of the booked unit, therefore they are not entitled to delay interest as they were well aware of the status of project at time of purchase of unit from original allottees. In support of their contention, they cited para 38 of judgement dated 24.08.2020 of Hon'ble Supreme Court in Civil Appeal number 6239 of 2019 titled 'Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited'.
- (iv) Regarding possession of unit, it has been stated in para 16 of reply that respondents are making all endeavour to hand over possession of booked plot to the complainants.

5. During the course of hearing today, ld. Counsel for complainants reiterated their written submissions and 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 booked by the original allottees on 25.01.2006 and Plot Buyer Agreement was duly executed on 21.11.2006 and complainants have made payment of Rs. 40,33,674/- 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 the possession of the unit at the earliest.
- (ii) There is no denial to the fact of Rs. 40,33,674/- having been paid by complainants to the respondents. Complainant has not annexed receipts of payment and is relying on statement of accounts dated 16.01.2012 and nomination letter dated 29.03.2012 issued by respondent. In terms of plot buyer agreement dated 21.11.2006, possession was to be delivered within 24 months from sanctioning of service plans of the colony. This clause is unconscionable. If the service plans had not been approved, respondents had no right to seek such huge amount of money from the complainants. Therefore, date of possession shall be considered 3 years from the day of execution of plot buyer agreement. Plot buyer agreement was executed on 21.11.2006 therefore deemed date of possession works out to be 21.11.2009.



(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 were allotted an apartment in question on 17.10.2006 and builder buyer agreement in respect of it got executed between the parties on 21.11.2006, thereafter the complainants stepped into the shoes of the original allottees on 25.02.2012. 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. Therefore, for all practical purposes, present complainants shall be deemed to have stepped into shoes of original allottee. Section 2 (d) of RERA Act, 2016 is reproduced below: -

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) 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 25.02.2012 after execution of builder agreement



dated 21.11.2006. Said transfer was duly endorsed by respondent on 29.03.2012. Deemed date of possession comes to 21.11.2009. The respondent was duty bound to deliver possession within stipulated time but he has failed in his duty. No reasonable justification/explanation has been provided by the respondent for delay of 12 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 still not complete. This act is serious default on part of respondent.

- (iv) 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.

- (v) The Authority observes that the respondent has severely misused its dominant position. They executed the BBA in the year 2006. Due date of possession was 21.11.2009. Now, even after lapse of 12 years respondent is not able to offer possession to the complainant. Respondent has not even specified as to when respondent 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 is entitled to, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed.

Admittedly, the respondent in this case has not made any offer of possession to the complainant till date. So, the Authority has no hesitation in concluding that the complainant is entitled to payment of delay interest from deemed date of possession up to the date on which a valid offer is sent to her after obtaining Completion certificate/Part completion 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 21.11.2009 (deemed date of possession) to 01.06.2022.

- (vi) Complainant has not annexed receipts of payment and is relying on statement of accounts dated 16.01.2012 and nomination letter dated 29.03.2012. Since complainants are entitled to delay interest from the deemed date of possession (21.11.2009) till the date of order (01.06.2022), an e-mail dated 10.06.2022 was written to the complainants to submit receipts of payments to verify the date on which such payments were made to enable the Authority to calculate the payable delay interest thereon. However, complainants have not submitted any receipts. In the absence of receipts, case is being decided on the basis of best evidence placed on record by the complainant which



is a statement of accounts dated 16.1.2012 for an amount of Rs. 32,66,025/- and for remaining amount of Rs. 7,67,649/- nomination letter dated 29.03.2012. Delay interest on the amount of Rs. 32,66,025/- is being calculated from 16.01.2012 till 01.06.2022 and on an amount of Rs. 7,67,649/- from 29.03.2012 till 01.06.2022.

(vii) The delay interest mentioned in aforesaid paragraph has been calculated on an amount of Rs 29,75,624/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC amounting to Rs 3,58,400/-, IDC amounting to Rs 1,55,750/- and EEDC amounting to Rs 5,43,900/-. The amount of such taxes 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.

(viii) 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.

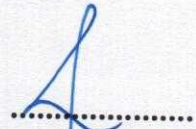
(ix) The Authority further orders that while upfront payment of Rs.29,31,018/- as delay interest shall be made within 45 days of uploading of this order on the website of the Authority, the monthly

interest of Rs. 24,009/- will commence w.e.f. 2nd June, 2022, payable on 2nd July 2022 onwards.

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

