



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 646 OF 2019

Ashim Kohli

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 10.09.2019

Hearing: 5th

Present: Shri Ashim Kohli, Complainant in person.

Shri Hemant Saini, Counsel for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Cost of Rs. 5000/- was paid in cash to the complainant by the respondent. The complainant case is that he was allotted a 3 BHK flat measuring 1402 sq. ft. in the respondent's project Park 81 situated in Faridabad vide letter dated 16.03.2010. The flat buyer agreement for the said flat was executed between them on 16.10.2010. The complainant opted for a construction linked plan. As per the FBA the basic sale price of the said unit was Rs. 30,74,012/- and the possession was to be delivered within 24 months with a further grace period of 180 days. The respondent failed to complete the flat by the promised date and offered possession of the said flat after a delay of around 6 years and even this offer is premature since the respondent has not obtained OC till date. As per the said letter of offer of possession dated 15.12.2018 the respondents have also made various demands like additional charges for increase in super area, Cost escalation, Enhanced EDC etc. which are unjustified.

During arguments the complainant made the following submissions:

- i) Super area has been increased from the original 1402 sq ft. to 1453 sq. ft. but there is no breakup or calculation of the original super area as well



as the increased super area shown in the statement of accounts, therefore increase in super area appears to be not justified.

- ii) Demand of Rs. 1,18,345.97/- towards Enhanced EDC has been made by the respondent which could not be raised as having been stayed by the Hon'ble High court of Punjab and Haryana.
- iii) A demand of Rs. 1,44,282.90 has been made towards cost escalation which is not justified.
- iv) Rs. 59,008.32 has been demanded as interest charges but no calculations or basis of such a levy has been furnished. The complainant feels that it has been calculated @18 % which is excessive and burdensome.
- v) The demand of Rs. 1,35,598/- towards GST has been argued should be borne by the respondent. Had the respondent offered possession to the complainant in time he would not have been burdened with this tax, as the deemed date of possession was much before the introduction of GST.
- vi) A demand of Rs.,. 50,000/- as club membership charges is unjustified because there is no club in the vicinity of the society.



2. The complainant has also apprised the Authority that the respondents are forcing him to sign an undertaking for delivery of possession which has been drafted in a language whereby all his rights will stand waived off after signing the document. The Authority vide its order dated 05.09.2019 had directed the respondent to withdraw the said letter seeking signing of the undertaking.

The complainant states that he has made full payment under protest and now seeks the following reliefs:

- i) Refund of excess amount charged for alleged increase in super area, Enhanced EDC, Cost escalation, interest etc.
- ii) Delay compensation @ MCLR+2 % from 16.10.2012 till offer of possession dated 15.12.2018 should be granted.
- iii) Date of actual offer of possession after obtaining occupation certificate should be communicated and possession should be delivered at the earliest.

3. The respondent in his reply submits that:

- i) This Authority has no jurisdiction to entertain the present complaint because the complainant cannot rely on the provisions of RERA Act qua



the agreement that was executed prior to coming into force of the said Act.

- ii) The present complaint is not maintainable as the parties had agreed under the FBA to attempt at amicably settling the matter and if not settled amicably, to refer the matter for arbitration.
- iii) The complainant prior to making booking of the unit was aware and had agreed to all the charges including the interest on delayed payments. The charges namely Basic sale price, External development charges, Infrastructure development charges, VAT, Maintenance charges, EEDC, registration charges, stamp duty and incidental charges were quantified at the stage of booking itself, but other charges such as fresh incidence of tax levied by the Government, electrification charges, cost of installation of Sewerage water treatment plant etc as specified by DTCP were not quantified at the stage of booking but were agreed heads of charges. The said charges were already agreed upon by the complainant at the stage of entering into the transaction vide clause 6 of the duly executed FBA. The respondent gave additional incentive in the form of timely payment discount and the complainant has availed TPD of Rs. 1,04,368.90/- but the complainant made several defaults in making timely payments.



- iv) The complainant had also agreed that in case of any change in super area of the flat, revised price would proportionately be determined on the basis of the original rate vide clause 10 of the booking application.
- v) The parties had also agreed vide clause 20.17 of the FBA to pay for cost escalation.
- vi) The complainant vide an undertaking and affidavit dated 03.11.2010 has specifically undertaken that he shall have no objection regarding the changes taking place due to modification/ revision in the tentative layout plan/ building plan of the floor during the construction/completion of the floors and further agreed for the revised EDC and Infrastructure development charges, VAT, Maintenance charges.
- vii) As per clause 2.17 of the FBA it was agreed between the parties that various facilities would come up in stages and that any delay in providing the said facilities, would not entitle the allottees to claim any damage etc. from the respondents.
- viii) The parties had duly agreed under the FBA dated 16.10.2010 that subject to force majeure and the complainant complying with all the terms and conditions of the FBA, the possession of the flat will be offered within a period of 24 months from the date of execution of FBA with a



grace period of 180 days. The respondent had accepted the booking of the unit based on Self certification policy issued by DTCP, Haryana and there was delay on part of DTCP in issuing the final order in this regard which was finally issued on 08.07.2015. There was delay due to force majeure and the complainant had failed to make timely payments as per the agreement, hence the complainant is not eligible for any compensation under clause 5.5 of FBA.

ix) The respondent has already applied for OC to the concerned authorities after completion of the unit and the unit is in ready to move in position and accordingly offer of possession has been issued.

3. The Authority after considering the submissions made by both the parties observes as follows:

i) As per the FBA the basic sale price of the apartment is Rs. 3,074,012 whereas as per the statement of accounts provided at the time of offer of possession the BSP is shown to be Rs. 32,01,507.82.

It is presumed that this is on account of increase in super area. This needs to be confirmed.

ii) The contention of the respondent is that the Authority has no jurisdiction to entertain the present complaint is rejected in view of the



law laid down in complaint case no. 144 of 2018 Sanju Jain v/s TDI. RERA Act has been enacted to settle all the subsisting as well as the future disputes between developers, real estate projects and the allottees. This Authority is essentially enforcing the provisions of the agreements made between the parties, therefore is not enforcing the provisions of the Act with retrospective effect.

ii) As per the provisions of flat buyer Agreement, the super area could be changed to the extent of 15 %. In the present case the super area has been increased from 1402 sq. ft. to 1453 sq. ft. which represent an increase of about 3.63 % therefore, the change in super area and the demand made in accordance with that is covered by the flat buyer Agreement. The respondent, therefore is entitled to charge for the same at agreed rates, subject to the condition that the increase in area is actual, justified and as per approved plans. The respondents shall provide detailed calculation in this regard to the complainant.

iii) The enhanced EDC has been stayed by the Punjab and Haryana High Court, accordingly the respondent cannot demand EEDC from the complainant. However if the amount had already been collected and has been deposited with the department, refund at this stage cannot be allowed, but it will remain subject to the decision of the High court.



However, in case it has not been deposited with the department, this amount shall be refunded to the complainant subject to the condition that the complainant shall pay it if Hon'ble High Court finds this money payable.

iv) Demand on account of cost escalation shall be recalculated in accordance with the principles laid down in Madhu Sareen's case.

v) The delivery of possession has been delayed by more than 5 years Had it been delivered in time or with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is the wrongful act on part of the respondent in not delivering the project in time due to which the additional tax has become payable. There is no default on part of the complainant. For delay in delivering the possession, the incidence of GST should be borne by respondent only. It is also observed that the amount of GST which is being demanded may not actually be leviable on the apartments purchased by way of construction linked payment plan.

vi) Regarding club membership charges the Authority is of the view that if the club has come into existence, and the same is operational or is likely to become operational soon the demand of Rs. 50,000/- shall be paid by



the complainant. However if the club building is yet to be constructed, the respondents shall prepare a plan for completion of the club and demand money from members in instalments up to the date of completion of the club.

vii) Delay compensation

The complainant has opted for the construction linked plan and the demands have been made as per the construction work carried on by respondent. The respondent was not charging from the complainant when the construction was not in progress.

The complainant has been offered possession vide letter on 15.12.2018. As per flat buyer agreement the possession was to be offered within 24 months of execution of the FBA after adding 180 days grace period. Accordingly due date of possession in the present case is **16.04.2013**. No interest is payable on the amounts paid upto the date of possession. However, the interest @ 9 % p.a will be provided to the complainant from the due date of possession i.e from 16.04.2013 till the actual date of offer of possession i.e 15.12.2018 on the amount paid by him as shown in the table below.



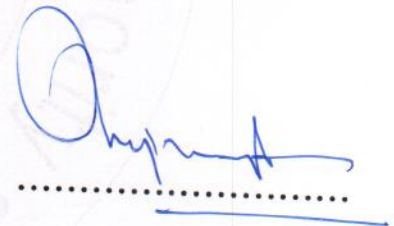
Date of Payment	Amount	Interest payable (Calculated @ 9 %) upto the date of possession i.e 15.12.2018
30.09.2009	3,00,000/-	
05.01.2010	3,00,000/-	
20.03.2010	1,66,891/-	
29.03.2010	1,80,000/-	
05.08.2010	3,48,200/-	
29.05.2012	1,18,345/-	
20.03.2013	3,44,376/-	
Total Amount paid till 16.04.2013	17,57,812/-	8,97,011/-
20.05.2013	3,44,376/-	1,72,325/-
20.09.2013	6,77,121/-	3,18,720/-
20.06.2018	3,61,989/-	15,605/-
Total interest payable		14,03,661/-



4. As a consequence of the above, the offer of possession dated 15.12.2018 is quashed to the extent above ordered. The respondents are directed to recalculate the amounts payable by the complainants in accordance with aforesaid directions and issue to the complainant a fresh offer of possession along with fresh statement of accounts after duly accounting for the interest to be paid on account of delay in offering possession as calculated above. All other issues, which have not been specifically dealt with shall be treated in accordance with the principles laid down in complaint no. 113 of 2018 Madhu Sareen v/s BPTP. If the complainant is not satisfied with the fresh statement of accounts, he will have a right to approach this Authority again.

Cost of Rs. 15000/- payable to the Authority and Rs. 7000/- payable to the complainant shall also be paid.

Disposed of in above terms. The orders be uploaded on the website of the Authority and files be consigned to the record room.



RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
(MEMBER)