



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 33 OF 2019

Pankaj ShuklCOMPLAINANTS(S)

VERSUS

BPTP LtdRESPONDENT(S)

2. COMPLAINT NO. 35 OF 2019

Surender PrasadCOMPLAINANTS(S)

VERSUS

BPTP LtdRESPONDENT(S)

3. COMPLAINT NO. 48 OF 2019

Gaurav Sharma and Manjree SharmaCOMPLAINANTS(S)

VERSUS

BPTP LtdRESPONDENT(S)

4. COMPLAINT NO. 54 OF 2019

Rajeev KumarCOMPLAINANTS(S)

VERSUS

BPTP LtdRESPONDENT(S)

5. COMPLAINT NO. 55 OF 2019

Shrawani GhoshCOMPLAINANTS(S)

VERSUS

BPTP LtdRESPONDENT(S)

6. COMPLAINT NO. 81 OF 2019

Raj kumara Sharma

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

7. COMPLAINT NO. 192 OF 2019

Rajesh Kumar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

8. COMPLAINT NO. 195 OF 2019

Satyendra Kumar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

9. COMPLAINT NO. 198 OF 2019

Parveen Batra

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

10. COMPLAINT NO. 50 OF 2019

Vimal Gupta

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

11. COMPLAINT NO. 49 OF 2019

Rajesh Kumar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

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12. COMPLAINT NO. 695 OF 2018

Vivek

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

13. COMPLAINT NO. 36 OF 2019

Satish kumar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

14. COMPLAINT NO. 191 OF 2019

Sumant Maurya

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

15. COMPLAINT NO. 197 OF 2019

Kiran Bhadula

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

16. COMPLAINT NO. 231 OF 2019

Vishesh Kumar Sahu

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

17. COMPLAINT NO. 237 OF 2019

Man Singh Chauhan

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 03.10.2019

Hearing: 8th in 695 of 2018.

5th in all other cases.

Present: Shri N.K Setia, Counsel for the Complainant

Shri Himanshu Monga, Counsel for the Respondent.

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. This order will dispose of all seventeen complaints listed above since core issues being dealt in these cases are identical in nature and facts.
2. Therefore, Complaint case No. 192 of 2019 under the title of Rajesh Kumar versus BPTP Ltd. was taken as lead case. Complainant's case is that he booked a flat in the project namely 'Park Elite Premium' being developed by the promoter in 2009 with a payment of Rs. two lacs as booking amount. Flat buyer Agreement between the complainants and respondent promoter was executed on 16.12.2010. Complainant has already made a payment of Rs. twenty three lacs approximately against a basic consideration of Rs. 17.98 lacs. He further conceded that various other charges like EDC+IDC, Car parking and

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PLC are excluding basic sale price mentioned above. Complainant had opted for construction linked payment plan. As per clause 3 of the agreement, project was to be completed within 36 months plus 6 months as grace period. So, the possession of booked property was to be given in the first quarter of 2014 as per this agreement.

3. Respondent, in terms of agreement entered between the parties was required to hand over possession within 36 months plus grace period of 6 months but such period for handing over possession of booked properties had already lapsed in all these cases whereas complainants had not obtained possession of their respective units. So, their prayer in these cases is to grant them possession along with delay compensation and quash the impugned demands of additional amount. The impugned demands were raised on the pretext of increase in cost of building materials, increase in super area of the purchased units, enhanced EDC, club membership charges, maintenance charges and amount leviable as GST, VAT, service tax etc.

4. On the other hand, refuting all above allegations of the complainants, respondent has resisted the complaints averring that all the demands are justified and have been raised in accordance with actual increase in cost of building material, increase in super area, enhanced EDC, charges for club membership and amount leviable as GST, VAT and service tax, etc.

Respondent has further pointed out that in complaint no. 36,191,197,231 and 237 of 2019, Complainants have sought same reliefs as sought in first twelve complaints. But he further pleaded that these complaints could not be treated at par with first twelve complaints as allottees of these complaints have already given their respective undertakings whereby they have forgone their claim of delay compensation. This undertaking mentioning the provisions as per annexure R-1 page 13 of reply to the complaint no. 36 of 2019 titled Satish Kumar vs BPTP Ltd. Is placed on record. So, the contents of said undertaking one being reproduced for ready reference.

“(i) That I/we have purchased a unit no. D-402 in your project PARK ELITE PREMIUM situated at Sector 84, Faridabad. I/we acknowledge that I/we have purchased the unit from open market in re sale and I/we are not original allottee(s) of the unit.

(ii) I/we hereby waive my/our right to claim delay compensation from company for delay in making offer of possession as agreed in the _____ Buyer’s Agreement and further undertake not to hold the company, land holding company(ies), licensee company(ies) or any of its directors,

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representatives, employees, agent responsible on this account.

(iii) That I/we is executing this undertaking with my/our free will and without any coercion.

(iv) That I/we shall also ensure that in case I/we transfer my/our booking to any other person then in such event such other person shall also be bound by this undertaking and I/we shall ensure that I/we shall do necessary documentation to give effect to this obligation.

(v) That, to the extent contrary, the provision of this undertaking shall supersede the provision of the Buyer's Agreement."

In view of above, undertaking especially clause (i) and (ii) of the undertaking, these complainant allottees have already foregone their claim of compensation on delay period of handing over of possession of their flats.

5. Whereas, in complaint no. 695 of 2018, respondent has filed his short reply whereby he states that the respondent has already applied for Occupation certificate for the project. He also states in his written reply that the replies filed by him in complaint No. 173 of 2018 titled as Puran Sharma and

complaint no. 113 of 2018 titled Madhu Sareen vs BPTP Ltd may be taken as part and parcel of reply in this case also.

6. In complaint no. 49 of 2019 titled Rajesh Kumar v/s BPTP Ltd, respondent has not filed his reply on merits. However, subject matter and reliefs sought by the complainant are similar and identical in nature and facts of rest of the complainants. Therefore, Authority also disposes off this case in same terms.

7. After hearing the parties and going through the record, the Authority observes that it has already laid down principles for settlement of various issues pertaining to increase in prices of building material and charges for GST, VAT and service tax in earlier complaints filed against the respondent, which were decided on 16-7-2018 with lead case bearing complaint case no. 113 of 2018 titled Madhu sareen vs BPTP Ltd. So, the parties to the present complaint cases will be governed by the principles of Madhu Sareen case, for the purpose of levying demands towards increase in prices of building material and charges payable for GST, VAT and service tax.

The issue pertaining to increase of super area has been also settled by this Authority by laying principles and guidelines in complaint case bearing no. 607 of 2018 titled as Vivek kadian vs TDI and complaint case bearing no. 22 of 2019 Paramjit Singh versus TDI . The respondent shall therefore, recalculate the super area in accordance with the principles laid down in the said judgment and

send a detailed statement to the complainants clearly specifying therein the dimensions of carpet area, balcony area and each component of such other areas which put together could be legitimately counted towards the super area of the respective units allotted to the complainants.

With regard to demand raised by the respondent for enhanced EDC, Authority has observed in earlier decided case that the same is not payable at present because dispute on this issue is pending adjudication before the Hon'ble High Court. The Authority will therefore, hold that the respondent shall be entitled to demand enhanced EDC from the complainant's along with interest, if any, as and when it becomes payable per the decision of Hon'ble High Court.

As regards club membership charges, Authority will observe that the respondent will be entitled to demand club membership charges from date on which club becomes functional. So, considering that the club is presently not functional, the respondent is directed that if he had already collected some money on account of club membership, the same shall be refunded to the concerned complainant. Without prejudiced respondent's right to recover it subsequently when club facilities becomes functional for use by the complainants.

The charges for maintenance shall be recovered by the respondent on the basis of actual expenditure incurred on carrying out maintenance services and

details of such expenditure shall be made available in the office and website of the respondent for appraisal by the allottees of the project.

This authority had expressed divergent views In Madhu Sareen's case with regard to grant of delay compensation to the allottees and the majority view taken in that regard was to award delay compensation by calculating interest on the already paid amount as per rule 15 of HRERA Rules i.e @ equivalent to SBI highest marginal cost of lending rate plus 2% . The reasoning and logic for taking minority view in the matter was expressed in complaint case number 49/2018 titled as Parkash Chand Arohi Versus Pivotal Infrastructure Pvt. Ltd. The appeals have been filed against the aforesaid decision and decision of Hon'ble Appellate Tribunal is still awaited. So, the respondent is directed to calculate the delay compensation in accordance with the principle laid down by majority members in Madhu Sareen's case. Subject to the condition compensation so calculated will be later liable for revision in accordance with the view expressed by the Hon'ble Appellate Tribunal.

The issue of relief and facts of complaint no. 33, 35, 48, 54, 55, 81, 192, 195, 198, 50, 49, 36, 191, 197, 231, 237 of 2019 and 695 of 2018 are identical to all those issues which have already been decided in complaint no. 113 of 2018 titled as Madhu Sareen vs BPTP.



As far as complaint no. 36, 191, 197, 231 and 237 of 2019 are concerned, Authority is of the view that these complainant/allottees have already foregone their claim of compensation on delay period of handing over possession of their respective flats in view of submission of their respective undertaking specially clause (i) and (ii) of the undertaking submitted to the promoter respondent at later stage.

11. All the Complaints are accordingly disposed of. The respondent is directed to offer fresh possession to the complainants along with a statement of accounts payable and receivable by the complainants in accordance with the principles referred above. Case is **disposed of** in above terms. The orders be uploaded on the website of the Authority.



ANIL KUMAR PANWAR
(MEMBER)



DILBAG SINGH SIHAG
(MEMBER)