



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 430 OF 2019

Rajneesh Kapoor

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

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

**Member
Member**

Date of Hearing: 27.11.2019

Hearing: 7th

**Present: Shri Akshat Mittal, Counsel for the Complainant.
Shri Hemant Saini, Counsel for the Respondent.**

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. Complainant's case is that on 05.01.2010, he booked a flat bearing no. AQ5-06-FF, in the project 'Park 81' being developed by the respondent after payment of Rs. 3,00,000/- by opting construction linked plan. Floor buyer

agreement was executed between the parties on 16.10.2010. The basic sales price was Rs. 30,74,012 less discount of Rs. 1,22,960/- against which he had already paid Rs. 28,34,893/- till date. As per agreement, due date for delivery of possession was 15.04.2013 but there is a delay of 5 years and 8 months in delivery of possession. Therefore, he prays for refund of the paid amount and delay compensation.

2. Learned counsel for the complainant further averred that complainant was offered possession on 15.12.2018 with a concocted demand of Rs. 10,89,394/- which included cost of Rs. 1,18,345/- for EEDC, Rs. 1,44,282/- against cost escalation. In said offer of possession, basic sales price was claimed to be Rs. 30,78,550.82 which was not acceptable to the complainant because as per the agreement the basic sales price is Rs. 29,51,052/-.

2. On the other hand, refuting all above allegations of the complainant, learned counsel for the respondent submitted that delay in offering possession of the unit was due to inaction of Govt. authorities which was beyond his control. Even though he completed the construction and offered the possession to the complainant vide letter dated 15.12.2018 with a demand of Rs. 10,89,394/- on account of club membership charges, cost escalation, EEDC, GST, VAT and service tax etc. whereas the complainant did not take possession of the booked property as he himself defaulted in making the said payments. He

further averred that said demand was in accordance with the agreement, moreover complainant was given timely payment discount of Rs. 75,758.33/-.

4. After hearing the parties and going through the record, the Authority observes that it has already decided principles of settlement on various components like charges for GST, VAT and service tax in earlier complaints filed against the respondent and decided on 16-7-2018 with lead case bearing complaint case no. 113 of 2018 titled Madhu sareen vs BPTP Ltd. So, the present parties will also be governed by the same 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.

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 has been taken with regard was to award of 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% from the deemed date of possession till the date of offer of possession being offered after obtaining occupation certificate. 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.

6. Further, with regard to the contention raised by the complainant regarding the difference in amount of basic sales price in flat buyer agreement and offer of possession dated 15.12.2018, the Authority observes that the basic sales price of Rs. 29,51,052 as per the agreement will prevail over the BSP mentioned in the offer of possession i.e. Rs. 30,78,550.82/-.

7. Complaint accordingly disposed of. The respondent is directed to offer fresh possession to the complainants along with a statement of amounts 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)