



Complaint No. 348 and 560 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 348 OF 2019

Anoop Kumar Verma

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

2. COMPLAINT NO. 560 OF 2019

Niranjn Prasad Agarwal

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

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

**Member
Member**

Date of Hearing: 27.11.2019

Hearing: 5th in 560 of 2019.

7th in 348 of 2019.

Present: Shri Vivek Sheron, Counsel for the Complainant

Shri Hemant Saini, Counsel for the Respondent.

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. This order will dispose both the captioned complaints listed above since core issues being dealt in these cases are identical in nature and facts.
2. Therefore, Complaint case No. 348 of 2019 under the title of Anoop Kumar Verma versus BPTP Ltd. was taken as lead case. Complainant's case is that he booked a flat bearing no. E-78-FF on first floor of Block-E with tentative super area of 1022 sq. ft. in the project namely 'Park Elite Floor' being developed by the promoter after making a payment of Rs. two lacs and fifty thousand. Flat buyer Agreement and addendum to FBA was executed between the parties on 07.03.2010. The basic sales price was Rs. 20,55,999 less discount of Rs. 1,02,800/- against which he paid Rs. 26,11,409/- till date. The possession of booked property was to be given till 07.09.2012 as per this agreement.



3. Learned counsel for the complainant submits that complainant was offered possession of the said apartment on 04.05.2018 subject to payment of Rs. 6,39,196.37/-. In the said offer, respondent has given wrong and reduced amount of Rs, 1,26,4900/- as delayed penalty whereas he is entitled for an amount of Rs. 3,55,000/-. Complainant has paid entire amount but even after making payment the respondent only granted him possession for fit outs on 08.08.2018. Respondent got occupancy certificate for the apartment on 07.09.2018. He further submits that as per occupation certificate, area of first floor is 87.506 sq. m. whereas as per the buyer's agreement it is 94.986 sq. m.

He prays for quashing of the letter of offer of possession dated 04.05.2018 and refund of illegally charged amounts relating to charges for club membership, excess amount charged for the area, PLC Charges, Electrification charges, STP and Electricity connection charges, EEDC, EDC/IDC Charges, Cost escalation, Service tax, VAT and GST.

4. On the other hand, refuting all above allegations of the complainant, learned counsel for the respondent submitted that the complainant has already been offered possession and he has been given timely payment discount amounting to Rs. 1,03,727.30. Also, the delay penalty has been adjusted and reflected in statement of accounts dated 18.06.2018. The complainant was issued NOC fit outs as the unit is complete in all respects. He



further submits that the demand of cost escalation, EDC/ IDC, STP, Electrification charges, electricity connection charges, GST, VAT and service tax is as per the clauses of the agreement and there is provision of club facility and club membership charges have been charged from the complainant accordingly. The PLC of 30meter wide road is applicable to the unit allotted to the complainant as per clause 1.5(d)(ii) of the FBA.

In nutshell, the respondent submitted that in the garb of relief being sought by the complainant, he is seeking to quash the charges vis a vis CMC, Electrification charges, STP, EEDC, EDC/ IDC, Cost escalation, Service tax, VAT, GST etc which the complainant had agreed and accepted to pay at the time of booking as well as execution of the agreement.

5. After hearing the parties and going through the record, the Authority observes that it has already laid down principles for settlement of issues pertaining to charges for CMC, Electrification charges, STP, EEDC, EDC/ IDC, Cost escalation, Service tax, VAT, GST 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 CMC,

electrification charges, STP, EEDC, EDC/ IDC, Cost escalation, Service tax, VAT, GST.

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 kadyan 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, the dimensions of balcony area and dimensions of 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.

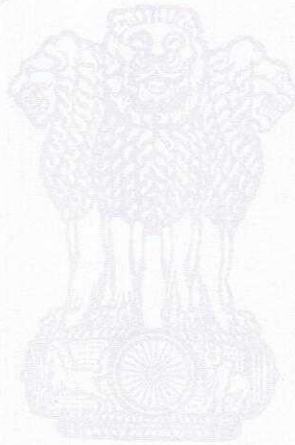
With regard to demand raised by the respondent for enhanced EDC, the Authority has observed in earlier decided case that the same is not payable at present because dispute on this issue is pending for adjudication before the Hon'ble High Court. The Authority will therefore, hold that the respondent shall 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.

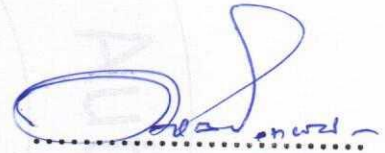


As regards club membership charges, the Authority observes that the respondent will be entitled to demand club membership charges from date on which club becomes functional. So, considering that the club is presently not functional, the respondent is directed to refund provided he had already collected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

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.

6. Complaints are 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 with a further direction that in case, the amount payable is more than receivable the same may be paid in two equal instalments of 45 days from the date of uploading this order. The orders be uploaded on the website of the Authority. The cost of Rs. 5000/- payable to the Authority and Rs. 2000/- payable to the complainant shall also be paid by the respondent.





ANIL KUMAR PANWAR
(MEMBER)



DILBAG SINGH SIHAG
(MEMBER)