



Complaint no. 265 of 2024

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 265 OF 2024

Chanchal Gilotra and Mohit Gilotra

...COMPLAINANTS

VERSUS

BPTP LTD.

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Member

Chander Shekhar

Member

Date of Hearing: 25.03.2025

Hearing: 13th

Present: -

Mr. Arjun Kundra, Counsel for the complainants

Mr. Tejeshwar Singh, Counsel for respondent

Through VC

ORDER(DR. GEETA RATHEE SINGH- MEMBER)

1. Complainants have filed present complaint seeking possession of unit bearing no. PA-242-GF. An original allottee had booked a unit on 09.06.2009 in respondent's project-'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 12.02.2012 entered between the parties, the respondent was under an obligations to deliver him possession latest by 12.08.2014. Complainants had purchased allotment rights of booked unit on 22.02.2010. An amount of ₹ 27,35,597/- has

already been paid against basic sale price of ₹ 19,69,323/-. Complainants had previously approached the Authority seeking relief of possession of the unit in question by way of Complaint no. 76 of 2021 which was disposed of vide order dated 22.09.2021 directing the respondent to handover possession and pay interest to the complainants for each month of delay from the deemed date of possession till the date on which a valid offer after obtaining occupation certificate is made for delivery of possession. Further, complainants have also filed an execution number 59 of 2022 before the adjudicating officer seeking execution of order 22.09.2021 which is next listed for hearing on 01.04.2025. The reliefs sought by the complainants vide captioned complaint are reproduced below for reference:-

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APPENDIX -F

In view of the facts mentioned above, the Complainant prays for the vng relief(s):-

- i. Direct the Respondents to deliver Immediate legal & actual Possession of the floor of the complainant i.e. PA-242-GF, BPTP Park Elite Floors, Parklands, Sec 75 to 89, Faridabad, Haryana Admeasuring:- 1,025 sq ft or 95.225 sq mtrs. On plot area of 180 sq yds. after due completion and receipt of OC & CC of the correct area of the unit/floor, etc., along with all the promised amenities and facilities and to the satisfaction of the complainant; and*



ii. Direct the respondents to keep paying prescribed rate of interest as per the Rera Act, on the amount already paid by the complainant from the promised date of delivery i.e. 12.08.2014 (as already held vide Order dated 22.09.2021 passed by this Hon'ble Authority Ann-C-4) till the actual physical & legal delivery of possession; and to also execute sale/conveyance deed;

iii. Direct the respondents to issue correct & valid Statement of account of receivables & payables, provide copy valid of OC (occupation certificate,) Completion certificate, etc.; AND further,

iv. Pass an order restraining the respondents from charging any amount from the Complainant which do not form part of the Floor Buyer's Agreement dated 12.02.2012 and/or is illegal and arbitrary including but not limited to illegal cost escalation charges of Rs. 1,08,732, unilateral illegal increase in Total sale price - to Rs. 30,54,765.79/- & unilateral illegal imposition of club charges of Rs. 15,000/-, Interest charges of Rs. 44,639.39/, Illegal & simultaneously imposition of GST charges, VAT charges, enhanced charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant alongwith Interest & and/or to direct the respondents to correct the total amount paid by the complainant ;

v. And to further quash/set aside the alleged illegal offer of possession dated 04.01.2024 and subsequent letters/demands & other unfair one-sided documents/



agreements sent/got executed by the respondents illegally and to issue fresh offer of possession after due completion and receipt of all the certificates (OC & CC) and all other permissions, on the area as promised under the FBA dated 12.02.2012, along with all the promised amenities and facilities as promised and charged for and to the full satisfaction of the complainant;

v) & further issue a fresh statement of accounts as per the law & as per the sections/ rules of the Rera Act;

vi) And to further quash/set aside the alleged requirement/demand of Undertakings/Indemnity illegally sought from the complainant by the Respondents at the time of taking possession; AND/OR

May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter;"

2. Further, the relief sought by the complainant by way of complaint no. 76 of 2021 and operative part of order dated 22.09.2021 are reproduced below for ready reference:

"5. Reliefs) Sought:

In view of the facts mentioned in paragraph 4 above, the

Complainants pray for the following reliefs):-

- i. Direct the Respondents to deliver Immediate Possession of the floor of the complainants i.e.*

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PA-242-GF, BPTP PARK ELITE FLOOR-77, Parklands, Faridabad, Haryana admeasuring 1025 sq ft. after due completion and receipt of occupancy & completion certificates) along with all the promised amenities and facilities and to the satisfaction of the complainants; and

ii. Direct the respondents to pay prescribed rate of interest, on the amount already paid by the complainants from the promised date of delivery i.e. 12th Feb 2014 till the actual physical and legal delivery of possession; and

iii. Pass an order restraining the respondents from charging any amount from the Complainants which do not form part of the Floor Buyer's Agreement dated 12.02.2012 and/or is illegal and arbitrary including but not limited to delay penalty charges, enhanced charges, cost escalation charges, GST charges, VAT charges, Club membership charges, etc. whatsoever; and/or to direct the respondents to refund/adjust any such charges which they have already received from the complainant;

iv. Pass an order waiving off and setting aside any Delay Penalty Charges levied by the respondents upon the complainants till date; and

v. May pass any other order or orders as this Hon'ble Authority may deem fit under the facts and circumstances of the matter; ”

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“Order (22.09.2021):

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6. *Learned counsel for the respondent has urged for awarding delay interest at the rate mentioned in BBA for the period prior to coming into force of RERA Act, 2016. Said argument is not acceptable for the reasons already spelt out in majority judgement of the Authority rendered in another case of the respondent bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018. The dictum of said judgement, per view expressed by majority members, is that in a case where exists a disparity in the BBA about rate of interest chargeable from the builder and the allottee for defaults in discharge of their respective obligations towards each other, the the builder as well as the allottee are then liable to pay interest as per Rule 15 of HRERA Rules, 2017 for default in discharge of their respective obligations for the period prior to coming into force of RERA Act, 2016 and also for the period after coming into force of RERA Act, 2016. Adopting the said principle of Madhu Sareen's case, the Authority holds the complainants are entitled for payment of delay interest at the rate prescribed in Rule 15 of RERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to 9.30% (7.30%+2.00%).*

7. *Learned counsel for respondent has sought to escape the liability of paying delay interest on the*



strength of a judgement dated 24.08.2020 of Hon ble Supreme Court passed in Civil Appeal number 6239 of 2019 titled Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited' and another judgment dated 23.10.2008 of Hon'ble Supreme Court passed in Civil Appeal no. 3409 of 2003 titled as 'HUDA vs Diwan Singh'. The dictum of said judgement is that the allottee cannot claim interest for the delay which was already in existence on the day when he had purchased rights in a particular project. Said proposition cannot be applied in this case because the complainant herein had purchased the unit before lapse of agreed date of possession which per agreement, works out to 12.08.2014. So, there was no delay at all in completion and construction of project in question when complainant had purchased right in the project. In such situation, the interest which the respondent had agreed to pay on account of delay in delivery of possession, to the complainant in terms of BBA entered in year 2012, has to be awarded against the respondent. So, the Authority has no hesitation in holding the complainant entitled to delay interest from deemed date of possession which per agreement comes to 12.08.2014.

8. The complainant per receipts has paid total amount of Rs 27,35,597/- which includes even the amount of Rs 3,01,555 /- for EDC/IDC. The amount of EDC/IDC



is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder will be therefore not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs 24,34,042/- (Rs 27,35,597-Rs 3,01,555).

9. The respondent at the time of offering possession will also send a statement of account containing details of outstanding dues payable by complainant. For the purpose of preparing such statement, the demands in respect of which guidelines have been laid down by this Authority in complaint no. 113/2018 titled as *Madhu Sareen vs BPTP Pvt Ltd* decided on 16.07.2018 shall be strictly followed. The complainant shall be under an obligation to accept the offer of possession made after obtaining occupation certificate and shall also be liable to pay all the demands raised in the accompanying statement of accounts, within 30 days of receipt of statement of account and offer of possession. He will not be entitled to escape his liability in paying accompanied demands merely on the plea that some of



those demands are unjustified. So, he will be at liberty to expeditiously take legal recourse for challenging unjustified demands if any and to obtain stay order against payment of impugned demands. Except for the eventuality when he has obtained a specific restraint order qua some demand, the complainant will be liable to meet the demands within 30 days of the receipt of offer of possession and statement of account failing which the respondent will be at liberty to initiate proceedings for cancellation of his allotment.

10. The Authority got the delay interest calculated from its Account branch on Rs 24,34,042/- in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (12.08.2014) till date of order (22.09.2021) in terms of Rule 15 of HRERA Rules, 2017 .e. SBI MCLR+2% (9.30%). Such interest works out to Rs 16,03,820/- and it is held payable by the respondent to the complainant. For further delay occurring after the date of this order, the respondent is liable to pay monthly interest of Rs 18,864/- to complainant commencing from 22.10.2021.

11. Respondent is directed to pay the amount of upfront delay interest of Rs 16,03,820/- within 45 days of uploading of this order on the website of the 6 uR Complaint no.76 of 2021 Authority. The respondent's liability for paying monthly interest of Rs 18.864/- will commence w.e.f. 22.10.2021.

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12. Disposed of in above terms. File be consigned to record room."

3. In light of the above mentioned facts a specific question was put forth to the learned counsel for the complainant as to how is this complaint maintainable before the Authority. In response, Mr Arjun Kundra, learned counsel for the complainant submitted that vide the order dated 22.09.2021 complainant was given a liberty approach the Authority take legal recourse for challenging unjustified demands if any and to obtain stay order against payment of impugned demands. He apprised the Authority that the complainants are now in receipt of offer of possession dated 04.01.2024. Complainants on perusal of the same realized that the respondent has illegally issued offer of possession since the construction and development of the project is incomplete. Further, the statement of receivables and payables issued by the respondent with offer of possession were illegal and pre-mature. If the order dated 22.09.2021 is perused, complainants were liable to pay the demands raised vide said statement of account within 30 days of the receipt of offer of possession and statement of account unless the complainants had already taken a stay order against a specific demand. Since the stay order could not be obtained, the complainants have filed the present complaint seeking possession of the unit.

4. In rebuttal, learned counsel for the respondent submitted that the offer of possession made to the complainant was in consonance of the order passed

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in original complaint bearing number 76 of 2021. Complainants cannot be allowed to again agitate a fresh complaint on issues which have already been adjudged by the Authority and also in which the relief has been granted. Respondent has duly obliged with the directions issued vide order dated 22.09.2021 passed in complaint no. 76 of 2021. Further, a bare perusal of the relief sought by the complainants in both the complaints i.e Complaint no. 76 of 2021 and complaint no. 265 of 2024 would reveal that they similar in nature.. Since this particular matter has already been heard, argued over and decided by the Authority, this matter cannot be heard again. Therefore, captioned complaint should be dismissed on principles of res-judicata.

5. After hearing both the parties, Authority observes that the matter in present complaint already stands decided by way of order 22.09.2021 passed in complaint number 76 of 2021. Since the issues involved and grievances are of the same nature and in respect of the same unit, the matter cannot be heard again. The complainants have already accrued rights in their favour for the unit in question and may accordingly pursue them as per orders passed by the Authority. The present complaint is hence barred by the principle of res-judicata as the issues raised by the complainant by the present complaints have already been adjudicated and decided by the Authority the present complaint is hence barred by the principle of res-judicata as the issues raised by the complainant by the present complaints have already been adjudicated and decided by the Authority.



6. Case is disposed of. File be consigned to record room after uploading of this order on the website of the Authority


CHANDER SHEKHAR
[MEMBER]


DR. GEETA RATHEE SINGH
[MEMBER]

