

HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Complaint No. RERA-PKL-COMP. 8/2018

Date of hearing. On 16.07.2018, 7<sup>th</sup> Hearing.

Parties names. Ms.Kavita Phogat ...Complainant

Versus

M/s BPTP Limited. ...Respondent.

Coram: Shri Rajan Gupta, Chairman.  
Shri Anil Kumar Panwar, Member  
Shri Dilbag Singh Sihag, Member.

Present:- Shri Yadvinder, Advocate for complainant.  
Shri Hemant Saini & Deepti Rajpal, Advocates for respondent.

**ORDER:-**

1. Complainant herein has purchased a flat No. PA-27 situated on ground floor in respondent's project named "Park Land" Faridabad, from Shri Rakesh Chander Garg who was the original allottee of the said flat. Respondent endorsed such transfer of rights from Shri Rakesh Chander Garg to the complainant and made necessary change in the record on 14.12.2012. Thereafter, a buyer's agreement between the parties was executed on



20.03.2013 and the respondent thereby agreed to handover possession of the flat to the complainant latest by 20.03.2016.

2. According to complainant, total sale consideration of the flat was fixed at Rs. 44,91,747/- out of which she has already paid a sum of Rs. 37,46,935/-. Respondent thereafter raised no further demand. Complainant's grievance is that the respondent has not completed the project and since he has failed to handover timely possession in terms of the agreement, she is now entitled for refund of her paid amount along with interest and compensation.

3. Respondent did not dispute the complainant's averments about purchase of rights from the original allottee and the payment of Rs. 37,46,935/- out of total sale consideration of Rs. 44,91,747/-. He has however resisted the prayer for refund on the ground that the project has been completed and its occupancy certificate has been already applied on 24.04.2018. So, the complaint is liable for dismissal.

4. Parties have heard and record has been perused.

5. Respondent along with his reply has filed a copy of application (Annexure-2) which reveals that he has applied for completion certificate on 17.01.2014 and the respondent will thus be in a position to deliver the possession as and when the completion certificate is granted by the competent authority. In these circumstances, the Authority does not find it to be a fit case for refund of the paid amount. However, considering the fact that the respondent who was under an obligation to handover the possession by



20.03.2016 in terms of buyer's agreement, has delayed the delivery of possession, the complainant is held entitled for delay compensation at the rate equivalent to State Bank of India highest marginal costs landing rate plus 2% as envisaged under Rule 15 of HRERA Rules.

6. So, the complaint is disposed of with the direction that the respondent shall deliver the possession to the complainant within 30 days of the grant of completion/occupation certificate and will also pay the compensation at the rate equivalent to State Bank of India highest marginal costs landing rate plus 2% from deemed date of possession i.e. 20.03.2016 till actual date of delivery of possession. It is also made clear that nothing stated in this order shall be deemed as precluding the complainant from claiming such compensation as she may be entitled under the law from the competent authority.

7. Case is **disposed of** in terms of above order and file be consigned to the record room.

  
**Dilbag Singh Sihag**  
Member

  
**Anil Kumar Panwar**  
Member

**Rajan Gupta**  
Chairman.

I have perused the orders authored by my learned friends, Hon'ble Members of the Authority. I view the facts of the case little differently and arrive at the conclusions as follows:-

- (i) The complainant Ms Kavita Phogat purchased the apartment in question from the original allottee Shri Rakesh Chander Garg. The said purchase in favour of the complainant was duly acknowledged by the respondents vide their letter dated 14.12.2012 (Annexure P-4).
- (ii) Against the total consideration amount of Rs.44,91,747/-, the original allottee Shri Rakesh Chander Garg had paid an amount of over Rs.33 lakhs to the respondent and another amount of Rs.4,66,752/- was paid by the complainant on 04.04.2013. Accordingly, a total consideration of Rs.37,46,935/- stood paid to the respondent up to April, 2013.
- (iii) The respondent and the complainant entered into a floor-buyers agreement on 20<sup>th</sup> March, 2013. This agreement was in a standard format and made no reference whatsoever to the transactions having been done with the original allottee Shri Rakesh Chander Garg. In this floor-buyers agreement with the complainant, under clause 5.1, a time period of 30 months has been agreed to be the date of possession with a further period of 180 days as the grace period.
- (iv) If the date of execution of the floor-buyers agreement which is 20<sup>th</sup> March, 2013 is taken into consideration the deemed date of possession works out to 20.03.2016 without grace period and 20.09.2016 with grace period.

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- (v) Since nearly 75% payment had already been made upto December, 2012, it is ordinarily to be expected that the deemed date of possession shall be from the date when substantial payment had already been accepted because the original allottee would have been entitled to execute floor buyer agreement at that time. In this case the complainant stepped into the shoes of the original allottee. The respondent vide their letter dated 14.12.2012 has specifically endorsed the assignment/nomination of the apartment in question by the original allottee in favour of the complainant. Therefore, entering into a floor-buyer agreement effective from 20.03.2013 without making any mention of the majority of the payment having already been received from the original allottee in the year 2011 and 2012 amounts to an unfair trade practice. Either the deemed date of possession should be considered from say middle of 2012 when substantial payment had been received or if it is to be calculated from the date of floor buyer agreement i.e. 20.03.2013 then a reasonable interest should be paid to the complainant for the period for which money was kept by the respondent prior to March, 2013.
- (vi) The respondent has not cited any reason for delay in construction of apartments except certain disputes with one of their contractors. The respondents have pleaded it to be a force majeure condition. It is observed that the dispute with contractors cannot be called force majeure condition.
- (vii) In the light of above, respecting the floor buyer agreement, I would consider that the deemed date of possession works out

to 20.09.2016 inclusive of grace period of 180 days. But, since the respondents have not given any credit to the complainant for the period prior to the floor buyer agreement during which respondent had kept over Rs.37 lakhs of the complainant, I order that the respondent shall be liable to pay a reasonable interest of 9% to the complainant from the date of payment of each instalment upto the date of entering into the floor buyer agreement. The respondent shall credit this interest in favour of the complainant.

- (viii) The respondents have further delayed the delivery of the apartment to the complainant from 20.09.2016 till now. The case of the respondent is that they have already applied for occupation certificate and as soon as the same is received, the possession shall be offered to the complainant.

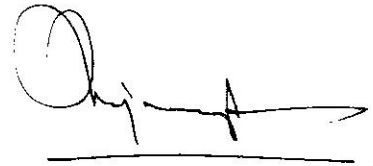
My learned friends have ordered that for the period of delay in delivery of possession a delay compensation at the rate of SBI MCLR+2% shall be allowed. This order has been passed on the basis of the principles arrived at by the majority members in the Complaint Case No. 113 of 2018- Madhu Sareen Versus BPTP Ltd. I have a difference of view with my learned friends on this account which was expressed by me in the minority judgment with the said complaint case No.113 of 2018.

The views expressed in Complaint Case No.113 of 2018 have been further modified in Complaint No.49 of 2018- Parkash Chand Arohi Versus M/s Pivotal Infrastructure Pvt. Ltd. I have laid down detailed principles for awarding compensation to the buyers for delayed delivery

of possession of the apartments to them. The logic, reasoning and conclusions in my dissenting judgment in the Complaint Case No.49 of 2018 will remain fully applicable in the present case as well.

- (ix) Accordingly, I order that for the period of delay from the deemed date of possession i.e 20.09.2016 the respondents shall be liable to pay delay compensation to the complainants in accordance with Clause 5.3 of the floor-buyers agreement which works out to Rs.10/- per sq.ft. of the super area for every month of delay. In addition the complainant shall be entitled to interest @ 9% on the entire amount which remained deposited with the respondent prior to entering into flat buyer's agreement, from the date of actual deposit of instalment upto the date of signing flat buyers agreement.

I order accordingly.



(Rajan Gupta)  
Chairman