

HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Complaint No. RERA-PKL-COMP. 63/2018

Date of hearing. On 30.07.2018, 7<sup>th</sup> Hearing.

Parties names. Vikram Singh Malik. ...Complainant

Versus

M/s Parker Builders Pvt. Ltd. ...Respondent.

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

Present:- Shri Vikram Singh Malik, Complainant in person.  
Ms. Yogita Rana, Advocate for respondent.


**ORDER:-**

1. The complainant herein booked a Villa measuring 550 Sq. fts. with the respondent and the latter had tentatively allotted him Villa No. 209 on 3<sup>rd</sup> floor in his project located at Kundli, District Sonapat. The basic sale price was fixed at Rs. 22,88,000/- and the complainant claims to have already paid a sum of Rs. 22,07,893/-. The buyer's agreement between the parties was executed on 14.10.2011 and the respondent was there-under required to handover possession latest by 14.04.2015 after adding grace period. The agreement envisaged payment of 24% interest to the respondent in case the complainant commits default in payment of any instalment while he for a default on the part of the



respondent in handing over timely possession was entitled to receive compensation @ Rs. 10/- per sq. ft. of the super area for each month's delay. The complainant's grievance is that the respondent has committed default in timely handing over possession and is offering him a smaller Villa without reducing the proportionate cost. So, he has filed the present complaint for issuing directions to the respondent, namely, (i) to deliver him possession with proportionate reduction of price, (ii) for payment of compensation @ Rs. 10,000/- per month equivalent to the present rent of the villa, (iii) for paying interest on the already paid amount @ 18% per annum starting from deemed date of possession till the actual date of possession and (iv) for paying compensation of Rs. 2 lacs towards mental agony and litigation costs.

2. The respondent has pleaded that he had already completed the project and applied for grant of its occupation certificate on 10.10.2014. According to him, there was no deficiency on his part and the possession could not be delivered to the complainant for want of Occupation Certificate, which is a function to be performed by the Town and Country Planning Department, Haryana. It was further pleaded that the complainant has not discharged his obligation of paying instalments on time and after addition of further charges as detailed in Para-2 of respondent's reply, a total sum of Rs. 99,596.96 is now outstanding against him. Respondent on the premise of these averments has prayed for dismissal of the complaint.

A handwritten signature in black ink, consisting of a large, stylized 'O' followed by a horizontal line and a small flourish. An arrow points to the right from the end of the signature.

3. The Authority has heard the parties on 30.07.2018 and has reserved its order. After giving thoughtful consideration to the pleading and averments of the parties and on perusal of record, the Authority has decided to make observations and directions hereinafter stated, for the disposal of present complaint.

4. Significant to notice from the buyer's agreement entered between the parties is that the respondent agreed to sell Unit No. 209, measuring 550 Sq. fts. to the complainant for a total sum of Rs. 20,88,000/- per clause (1) of the agreement. Clause (2) of the agreement equivocally recites that the aforesaid price would be exclusive of all taxes, duties, levies chargeable on the inputs/purchases of the Builder i.e. VAT, Work Contract Tax, Surcharge, Service Tax, Education Cess or any other tax/levy, by whatever name called. So, the complainant in addition to the basic price quoted in the buyer's agreement was liable only to pay taxes, duties and other levies such as VAT, Education cess etc. and nothing more.

5. The respondent per details mentioned in Para-2 of his reply is proposing to demand from the complainant an extra amount of Rs. 34,825/- on account of club membership and car parking and another amount of Rs. 3,47,750/- in the form of other charges described as under:-

	<b>Other Charges.</b>		
1	Sinking fund	200x550	1,10,000/-
2.	Labour cess	20x550	11,000/-
3.	EEC (External Electrification charges)	120x550	66,000/-
4.	Fire fighting.	70x550	38,500/-



5.	Enhanced EDC/IDC & other Govt. charges.	95x550	52,250/-
6.	Dual electric meter charges.	-	25,000/-
7	Power back up charges.		45,000/-
	Total		3,47,750/-

6. The Authority is of the considered opinion that extra liability can only be created for the aforesaid amounts by establishing that facilities of club and car parking are actually available for the use of complainant and the charges mentioned in the table, reproduced above, fall in the category of taxes, duties and levies as payable in respect of the purchase unit to the Government or Local Body or some other sovereign or statutory body. So, this Authority will direct the respondent to charge the complainant only for such facilities as are actually available for his use and will recover only such charges out of the sum of Rs. 3,47,750/- as are covered by the expression 'taxes, duties and levies'. The respondent before charging the tabled amounts shall supply a copy of the relevant documents to the complainants in order to satisfy him that charges so demanded are the part of taxes, duties and levies payable to the Government or Local Body or Sovereign or Statutory body

7. There is no denying the fact that the deemed date of possession as per buyer's agreement was 14.04.2015. The respondent has pleaded that he has offered the possession to the complainant vide letter dated 1.8.2015 and 27.8.2016. The first offer dated 1.8.2015 being made without obtaining occupation certificate was obviously invalid because it is respondent's own plea that he had received the occupation certificate on 12.8.2016. No doubt that second offer dated 27.8.2016 was made after grant of occupation certificate but



the Authority observes that said offer was also not valid offer for the reason that complete details of all payable and receivable amounts were therein not specifically disclosed to the complainant. To be more precise, the respondent in the said letter has stated that the complainant shall clear all his dues latest by 15.09.2016, failing which penal interest @ 24% per annum will be chargeable but has not disclosed the actual amount outstanding against the complainant nor has even disclosed the amount which the respondent himself was liable to adjust against the outstanding liability of the complainant on account of his own default in timely delivery of possession. So, the Authority would direct the respondent to issue a fresh offer of possession to the complainant by detailing out the outstanding amount due from the complainant as also the compensation amount payable to him on account of delayed delivery of possession. The amount of delay compensation payable to the complainant shall be calculated from the deemed date of possession i.e. 14.04.2015 till the actual date on which an offer of possession would be made in terms of this order.

8. In all fairness, it deserves to be mentioned that waiver in respect of payment of delay compensation was sought by the respondent on the ground that he had applied for the occupation certificate on 10.10.2014 much before the deemed date of possession i.e. 14.04.2015 and therefore, the delay had occurred solely on account of inaction and laziness on the part of the Town and Country Planning Department. The argument cannot be accepted because reply filed by the respondent eloquently reveals that his license had lapsed on 3.9.2013 much




before the filing of application for grant of occupation certificate and he got the license renewed on 20.04.2016. This shows that the respondent himself was not vigilant in getting his license renewed before submitting the application for grant of occupation certificate. So, he cannot be allowed to shift the blame to Town and Country Planning Department for the delay that occurred in handing over the possession. Viewed from this perspective, the respondent is himself liable to compensate the complainant for the entire delayed period.

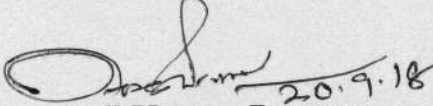
9. The complainant has urged the Authority to award him compensation at the same rate for which the respondent is entitled to penalize him for delayed payment of instalment in terms of the buyer's agreement i.e. 24% per annum. The respondent on the other hand has argued that he is liable to pay compensation to the complainant @ Rs. 10/- per sq. ft. of the super area for each month's delay. The Authority finds that the calculation of compensation @ Rs. 10/- per sq. ft. per month of super area will work out equivalent to an interest of 2.7% per annum. So, there was no equal playing fields laid for both parties in the buyer's agreement in respect of their respective defaults for discharging obligations. Section 2(za) of the RERA Act clearly mandates that default penalty for promoter and allottee of real estate project must be equal. Explanation (b) attached to specimen format of Agreement for Sale prescribed in Annexure A of HRERA Rules, 2017 contemplates that such clauses in the buyer's agreement as are contrary to the provisions of the RERA Act, has to be deemed void ab initio. Considering said provisions of RERA Act and HRERA



Rules, this Authority in Complaint Case No. 113 of 2018 titled as "Madhu Sareen Versus M/s BPTP Ltd." decided on 31.08.2018 has ruled that an allottee of real estate project after coming into force of RERA Act will be entitled to compensation for delayed period equivalent to interest @ State Bank of India Marginal Cost Landing Rate + 2% for the period prior to coming into force the RERA Act and also for the period after coming into force of the Act. So, the respondent is directed to calculate the compensation for delayed period equivalent to SBI MCLR+2%.

10. The complaint is disposed of in terms of the directions mentioned in this order. It is made clear that the complainant shall be at liberty to file a fresh complaint for redressal of any grievance that may arise due to non-performance of any direction by the respondent in terms of this order. The complainant will also be at liberty to file a complaint before the Adjudicating Officer for grant of other compensations, if any, to which he may be entitled as per the provisions of RERA Act. File be consigned to the record room

  
**Dilbag Singh Sihag**  
Member

  
**Anil Kumar Panwar**  
Member

**Rajan Gupta**  
Chairman.

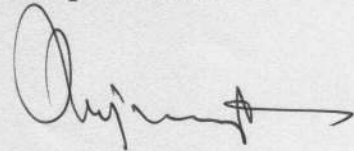
I have perused the orders authored by my learned friends. I agree with the entire order except the part relating to award of compensation to the allottees for the delay caused by the respondent in handing over possession of apartment. My learned friends have applied the provisions of Rule 15 of HRERA Rules to the agreements made between the parties much before enactment of the RERA Act itself. My learned friends have passed orders in this regard on the basis of a majority judgement passed in complaint case No. 113 of 2018 titled Madhu Sareen versus M/s BPTP Ltd. decided on 31.08.2018. I had a difference of views with my learned friends in this case and I consider that the orders passed by my learned friends in the said Complaint Case No. 113 of 2018 are not correct, the reasons for which have been given in detail in my separate judgement passed in Complaint Case No.49 of 2018- Parkash Chand Arohi versus M/s Pivotal Infrastructure Pvt. Ltd. The reasons given in my separate judgement in the Complaint No. 49 of 2018 shall be fully applicable in the present case as well.

2. In this case, the deemed date of possession was in April, 2015. The respondents have completed the projects and have offered the possession, therefore, it is not a case of misuse or siphoning away of funds, therefore, adopting the principles laid down in my separate judgement passed in Complaint Case No. 49 of 2018, the period of



delay upto two years should be considered reasonable period of delay in handing over the possession. Accordingly, for the delay of first two years in handing over the possession the complainant shall be entitled to compensation as agreed to between the parties i.e. at the rate of Rs.10/- per sq.ft. of the super area. Since the delay in this case works out to more than 3 years, for the remaining period over and above the initial two years, I consider it appropriate that the complainant should be compensated with reasonable interest. Hon'ble Supreme Court has accepted 9% to be the reasonable interest in such situations. Accordingly for this period of delay beyond initial two years the complainant shall be compensated with interest @ 9% per year calculated on the entire amount of money paid to the respondents.

I order accordingly.



---

(Rajan Gupta)  
Chairman