

**HARYANA REAL ESTATE REGULATORY AUTHORITY  
PANCHKULA, HARYANA**

**Comp Nos. :**

- 1. RERA-PKL 310/2018**
- 2. RERA-PKL 349/2018**
- 3. RERA-PKL 350/2018**
- 4. RERA-PKL 351/2018**

**Date : 20.11.2018**

**No of Hearing: 3<sup>rd</sup>**

1. Dinesh & Anr.

Versus

M/s BPTP Ltd.

And

2. Anurag Sharma

Versus

M/s BPTP Ltd.

And

3. Sushil Kumar Kaushik

Versus

M/s BPTP Ltd.

And

4. Gaurav Thakkar

Versus

M/s BPTP Ltd.

**...Complainant**

**...Respondents**

**...Complainant**

**...Respondents**

**...Complainant**

**...Respondents**

**...Complainant**

**...Respondents**



**CORAM :**

Sh. Rajan Gupta

**Chairman**

Sh. Anil Kumar Panwar

**Member**

Sh. Dilbag Singh Sihag

**Member****APPEARANCE :**

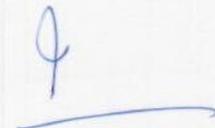
Shri Sudarshan Thakur

**Counsel for Complainants**

Shri Hemant Saini

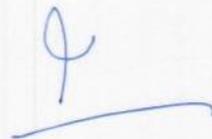
**Counsel for Respondent****Order:**

1. All the cases captioned above have been taken up together as the grievances involved therein are similar and against the same respondent wherein the lead case is Dinesh complaint No. 310/2018.
2. This matter was first taken up for hearing on 11.09.2018 after issuance of notice on 11.07.2018. On the first date of hearing complainants were directed to supply complete copy of the complaint to the counsel for respondents and respondents were directed to file the reply before the next date of hearing. The reply in this matter was filed on 09.10.2018. Today the matter is taken up for consideration and both the parties have addressed their respective arguments before the Authority. Ld. Counsel for respondents undertakes to deposit the pending cost of Rs. 10,000/- each in complaint no. 349, 350,351/2018 with the Authority.



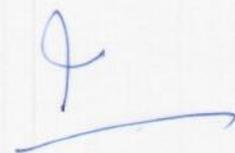
3. Brief facts of the case as submitted by Ld. Counsel for complainants are that the complainants are subsequent transferees of a unit E-83 measuring 1022 sq.fts which was booked by the original allottee on 22.05.2009 located in the 'Park Elite Premium" situated in Park land sector-84. Faridabad. An allotment letter dated 22.12.2009 was issued to the original allottee and Floor Buyer Agreement was executed between original allottee and respondents on 25.08.2010. Complainants purchased the unit by entering into an Agreement to sell with original allottee on 22.12.2012. Subsequently, nomination letter was issued in favour of complainants by respondents on 06.02.2013. Ld. Counsel for complainants further submitted that Basic Sale Price of the unit was Rs.20,55,999/- against which complainants have paid more than 95% of the sale consideration. The total amount paid by complainants till the filing of complaint is Rs. 29,12,746/-.

The complainants had availed a housing loan of 24 lakhs from HDFC @ 10.25 p.a. and are paying monthly instalment of Rs. 26,000/- . It was also submitted that as per clause 4 of the agreement, possession was to be delivered by Feb, 2013 including 6 months grace period. Later an Addendum to the Agreement was signed by both the parties which changed the delivery of possession clause to the extent that " seller proposes to hand over the possession of the floor to the



purchaser within a period of 24 months from the date of sanction of the building plan” were substituted with “Seller proposes to handover the possession of the floor to the purchaser within a period of 24 months from the date of execution of the Floor Buyer Agreement or on completion of payment of 35% of Basic Sale Price along with 20% External Development Charges/Internal Development Charges by the purchaser, whichever is later.” Accordingly, the scheduled delivery date was 24.02.2013, as the period of 24 months from the date of execution of the Floor Buyer Agreement lapsed later. When the complainants asked the respondents about the status of the construction and the reason for the inordinate delay of more than five years in construction and handing over the possession, the respondents failed to give any valid reason for the delay and even refused to show any documents concerning the project in question. The conduct of the respondents is not only unfair and arbitrary but also in flagrant violation of various provisions of the Real Estate (Regulation and Development) Act, 2016. Thus despite of receiving more than 85% of the sale consideration the respondents have failed to deliver the possession to the complainants till date.

Finally the respondents have issued a Letter of Possession dated 22.05.2018 accompanied with several unjustified demands. The

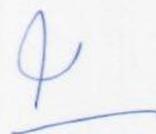


additional demands are on account of increased area from 1022 to 1187 sq. ft. which is about 16% of the area in violation of clause 25 of Floor Buyer Agreement; Cost escalation amounting Rs. 62679/-; Goods and Services Tax Rs. 77002/-; Service tax Rs. 65229/-; and interest on delayed payments etc.

The complainants have annexed photographs of June, 2018 showing that the project is still incomplete. He also submitted that they have been compelled to stay in a rented accommodation on rent @Rs.23000/- pm. He further stated that the complainants are paying interest on housing loan @ 26,159/- p.m.

The complainants also made allegations against the respondents regarding illegal charging and retention of Enhanced EDC (hereinafter referred to as "EEDC") in violation of the orders passed by the Hon'ble Punjab and Haryana High Court.

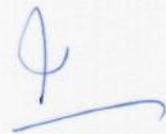
The complainants further made allegations against the respondents that as per the Floor Buyers Agreement, Preferential Location Charges could only be claimed and charged when the floor is situated on sector road or on or above 18-meter-wide road but since the floor of the complainants is not situated on any such preferential location, the respondents have illegally charged a sum of Rs. 2,45,608



from the complainants in violation of the terms and condition of Floor Buyer Agreement.

The complainants also raised objection that charges towards cost escalation are not payable since there was no clause for cost escalation agreed to between the parties. The complainants also alleged that club membership charges charged by respondents @ Rs. 50,000/- are not payable. The complainants also objected to the demand of GST raised at the stage of offer of possession as illegal.

The complainants through this complaint have prayed before the Authority to direct respondents to execute conveyance deed along with delay compensation @18 % p.a.; not to levy interest on payments; stay the offer of possession; Interest Free Maintenance Security & maintenance letter; refund enhanced External Development Charges Rs. 1,06,047/- @ 18% p.a. as per the stay order granted by Hon'ble Punjab & Haryana High Court; not to charge Illegal PLC; Pay rent totaling to 12,81,200/- @ Rs. 23,000/- p.m. till actual possession; to compensate complainants on account of payment against housing Loan EMI Rs. 26,000/- p.m. totaling to Rs. 9,28,048 paid till date; respondents to bear difference in registration charges; to proceed against respondent u/s 59 RERA Act; and direct respondents to pay Rs.



10,00,000 for mental agony, physical harassment and undue hardship and any other interim relief.

4. In response to the pleadings of the complainants, the respondents have raised preliminary objection that this complaint is not maintainable as it is not in the format prescribed under the HRERA, Regulations, 2018 as notified on 09.02.2018. Further, the present complaint is not maintainable as the floor of the complainants, which is an independent unit is over a plot area measuring 226.59 sq. mtrs. which is less than 500 sq. mts thus registration is not required as per section 3(2) (a) of RERA Act, 2016. Even as per Guidelines for Registration of Independent floors for the Residential Plots of Licenced Colonies issued by financial Commissioner & Principal Secretary to Govt. Haryana Town & Country Planning Department dated 27.03.2007, registration of independent floors can be allowed in case of residential plots of sizes 180 sq yards or above and each such dwelling unit shall be designated as 'Independent Floor' which shall be recognized as a distinct, identifiable property with a separate identification number.

The respondents have further denied the application of Rule 8 on them, since the present agreement was executed between complainants and respondents, prior to the enactment of RERA Act and



the promoter had already collected the amount in excess of 10 percent of the total price.

The respondents have further challenged the maintainability of the complaint on the ground that the parties are bound to refer the matter for arbitration under clause 33 of the Flat Buyer Agreement, in case of failure to reach any amicable settlement amongst them. But the complainants in breach of the Agreement has directly filed the present complaint without even making any effort to settle the matter amicably.

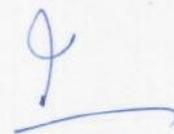
Further the respondents have sought to defend themselves by stating that the complainants are guilty of concealing from the Authority, the goodwill gesture made by the respondents like the Timely Payment Discount of Rs. 89,654.97/- given to the original allottee. Even the complainants have availed Timely Payment Discount benefit of Rs. 13,236.22/-. Thus, against the said booking/allotment, the respondent has given Timely Payment Discount of Rs. 1,02,891.19/- till date.

5. The respondents also rebutted in their reply the allegation made by the complainants regarding the unilateral increase in the super built up area of the floor by the respondents at the stage of offering possession of the floor, without there being any increase in the size of floor except balcony. The respondents have stated that the increase in the super area of the floor from Original area of 1022 sq. fts. to 1187

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sq. ft. was duly informed to the Original allottee vide letter dated 06.12.2011, which was much before the stage of offering possession.

10. Further the respondents also rebutted the allegations made by the complainant regarding charging and retention of Enhanced External Development Charges (hereinafter referred to as "EEDC") in violation of the orders passed by the Hon'ble Punjab and Haryana High Court. In this context, the respondents submitted that in May, 2012, the respondents received demand notice from Haryana Urban Development Authority (HUDA) on 25.05.2011 demanding EEDC from them in respect to the licenses granted by DTCP in Faridabad w.e.f 2005, wherein HUDA had revised the EDC rates for 2005 from Rs. 18,19,000 lacs per gross acre to Rs. 39,75,821 per gross acre which had been made applicable, retrospectively along with interest. HUDA vide revised memo dated 05.05.12 issued clarification with respect to the cut-off date for charging of the interest to be 25.05.2011 towards payment of the EEDC. Thus as per version of the respondents it was in view of the enhancement in EDC as per revised memo dated 05.05.2012 that the respondents made recalculations on plot area basis and accordingly raised demand towards EEDC on the Original Allottee vide letter dated 10.05.2012. The respondents had duly clarified the issue raised qua the enhancement in EDC to the Original Allottee vide



email dated 21.05.2012 where after, the Original Allottee after his satisfaction had even paid the EEDC on 29.05.2012. The respondents further submitted that after the stay was granted by the Hon'ble High Court of Punjab and Haryana against the operation of HUDA memo No. HUDA-CCF-Acctt-I-2011/24224 on 14.07.2011 in CWP No. 5835 of 2013 (Balwan Singh Vs. State of Haryana) the DTCP, vide its order dated 07.11.2013, directed the developers not to insist upon the payment towards EEDC, which was duly complied by the respondents. Thus the EEDC which respondents demanded and the Original allottee paid was much prior to the said notification by Department, Town and Country Planning.

6. The respondents also rebutted the allegation of complainants regarding charging of Rs. 2,45,608/- on account of Preferential Location Charges by stating in their reply that the floor allotted to the complainants is located on 30-meter-wide road and the said amount is charged in accordance with the Clause 1.5 (d) of the Agreement, were duly paid by the Original Allottee.

The respondents also rebutted the allegation of complainants regarding charges on account of cost escalation by submitting that at the stage of booking it was made clear to the Original allottee vide clause 31 of the Application that the respondents were entitled to seek



revision in the price on account of increase in cost of raw materials like cement, steel etc. The said understanding was reiterated in the Floor Buyer Agreement vide clause 20.18, albeit with a rider that the Respondents would be liable to pass the increase on the customers only if the increase is in excess of 10%.

Thus, the respondents have raised the demand towards cost escalation as per the agreed terms of the Floor Buyer Agreement and the complainants have even failed to appreciate the fact that though there were steep price rise since the year 2010 but the respondents have only taken escalation cost only for 2 years.

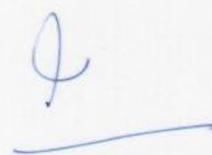
7. The respondents also rebutted the allegation of complainants regarding payment of club membership charges on the ground that the same were charged as per clause 1.5 (e) of the Floor Buyer Agreement. The respondents further submitted that they have made provision of club facility and have accordingly charged club membership charges from the complainants. They have also mentioned in their reply that Parklands, 'Sanctuary Club' is under construction, meanwhile make-shift clubs have been made available for various blocks within the project "Parklands". They have also submitted that in the club made operational in T Block & F Block, the facilities like Gym, Table Tennis



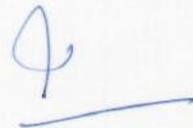
Table, Yoga Other Indoor games like carom, ludo, Reading room have been made available.

8. In the context, of charges on account of GST etc. the respondents submitted that the original allottee had vide clause 6 of the booking form which was reiterated in Clause 1.5 of the Floor Buyer Agreement, agreed that the allottee will be liable to pay statutory dues including but not limited service tax, VAT and other tax incidence that may arise. The original allottee further vide clause 1.14 had agreed to pay any fresh incidence of tax. Thus the respondents are liable to collect GST or other taxes levied by the Govt. from the allottees including complainants and deposit them with Govt.

9. As regards the allegation of the complainants that the possession of the floor has been offered to the Complainants without completion of civil work or finishing work. The respondents have submitted that the civil work of the units is complete and an offer for possession has been issued to the complainants on 22.05.2018 but the Complainants have till date failed to make balance payments and have not done requisite documentation. Hence, they have rendered themselves ineligible to seek any compensation/penalty they have also stated in their reply that about 150 families are already living in the vicinity.



10. The respondents further submitted that the unit is complete and they have already offered possession to the complainant on 22.05.2018. The respondent explained the delay by stating that the building plans were withheld by the Town and Country Planning Department, Haryana despite the fact that these building plans were well within the ambit of building norms and policies. It was also submitted by the respondents that due to the lack of clarity regarding the application of policy of self-certification to developers/colonizers, the respondents had to submit the building plans for approval again under the public notice dated 08.01.2014 issued by the Town & Country Planning Department which had granted 90 days to submit requests for regularization of construction. Later the Department vide its order dated 08.07.2015 finally clarified that self-certification policy was also applicable to cases of approval of building plans submitted by the respondent but did not release their plans. Thus the delay in offering possession of the allotted flat to the complainant was due to inaction of the Government or its agencies. Thus was beyond reasonable control of the respondents and covered under force majeure clause i.e. clause 14 of the Agreement.



11. At this stage, parties conceded that the issue involved in the bunch of above captioned 4 complaints are squarely covered by the decision already taken by this Authority in lead case bearing **Complaint No. 113 of 2018 titled as "Madhu Sareen Versus M/s BPTP Limited"** decided on 31.08.2018. In these circumstances, the Authority orders decision of all these cases in terms of the judgment passed in the leading case of "Madhu Sareen Versus M/s BPTP Limited" decided on 31.08.2018 and the matters stand disposed of in the same terms with further directions that when offer of possession is given by the respondents to the complainant, it shall be accompanied by a statement of accounts which in turn shall be prepared keeping in view the principle laid down by this Authority in complaint No. 113/2018 titled "Madhu Sareen vs BPTP Pvt. Ltd.. The action with regard to payment of compensation for delayed delivery will be determined in accordance with the principle laid down by the majority members, the views expressed by the Chairman in the Madhu Sareen Matter and **Complaint no. 49 of 2018. Parkash Chand Arohi v/s Pivotal Infrastructure Pvt Ltd.** will remain as it is.



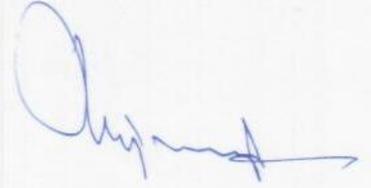
Disposed of in above terms. Files be consigned to the record room.



**Dilbag Singh Sihag**  
Member



**Anil Kumar Panwar**  
Member



**Rajan Gupta**  
Chairman