



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 180 OF 2020

Rameshwar Dayal Gera & others.

....COMPLAINANTS(S)

VERSUS

BPTP Limited

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 19.08.2020

Hearing: 1st

Present: Shri Arjun Kundra, Counsel for the Complainant.

Shri Hemant Saini, Counsel for the Respondent.

ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. The complainants herein have prayed for issuance of a direction against the respondent to deliver the possession of the flat to them which they had agreed to purchase in the said project. Their grievance is that they had already paid to the respondent a sum of Rs.24,42,040/- and as per terms of the Builder Buyers Agreement (BBA) entered between the parties on 08.11.2010. The respondent was obliged to offer the possession latest by 08.11.2012 but the possession has not been offered till date. Also, the complainants allege that they are not liable to incur the additional financial burden of GST as the delivery of their apartment was due in November 2012 and the delay has been caused due to the default on the part of the respondent. The complainants made payments to respondent as and when demanded. The complainants have also prayed for awarding interest on the already paid amount due to respondent's default in offering them possession on the agreed date.

2. The respondent in his reply has not disputed that possession has not been yet delivered to the complainants. Although, the respondent has denied the payment of Rs. 24,42,040/- His denial in this regard is vague in as much as he has not quantified the amount which he had already received. Such vague denial by the respondent in the wake of Rules 24, 25 and 26 of Haryana (Development Regulations of Urban Areas), Rules, 1976 which casts a duty on the promoter to



maintain proper record of all the payments received from the allottees, shall tantamount to admission of the fact that the complainants had already paid him a sum of Rs. 24,42,040/-. Further, the respondent averred that complainant is liable to pay statutory dues including GST, Service tax, VAT or any other incidence of tax as per clause 1.39 of the Agreement.

3. Learned counsel for the respondent, during the course of arguments today submitted that possession will be offered to the complainants by February, 2021. The Authority, therefore, has no hesitation in concluding that the complainants are entitled to be paid interest on the already paid amount from the deemed date of possession i.e. 08.11.2012 till the date on which the possession would be offered to them at the rate prescribed under Rule-15 of the HRERA Rules, 2017.

4. At this stage, complainant's grievance regarding GST also needs to be addressed. The government has invoked GST in the year 2017 after the lapse of the date on which the promoter was obliged to handover the possession of the purchased unit to the complainant as per the terms of the builder buyer agreement. So, the complainant's arguments are that they are not liable to incur the additional burden of GST more so when they had committed no default and have made payments to the respondent as and when demanded. Admittedly, the delivery of the apartment has been delayed by more than 8 years. Had it been delivered by



the due date or even with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is the wrongful act on the part of respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of the complainants in this regard. For the inordinate delay by the respondent in delivering the apartments, the incidence of GST should be borne by the respondent only. It is also observed that the amount of GST which is being demanded may not actually be leviable on the apartments purchased by way of construction linked payment plans. The respondents would be well advised to take the opinion of an expert in this matter and in case GST is found payable, the same shall be paid by the respondent promoter himself. However, the respondent will be entitled to recover from the complainants the tax as may be leviable on the apartment purchased by them in consonance with the taxation provisions applicable on the deemed date of possession i.e. 08.11.2012. The amount of tax so recoverable from the complainant shall be calculated as per the advice of the expert and in accordance with the taxation law so applicable. The respondent shall serve a detailed statement reflecting the manner in which his liability was arrived at and the complainants will be liable to pay the same within 30 days of delivery of such statement on them.

5. Significant to notice is that the possession to the complainant as per the terms of Builder buyer agreement entered between the parties was required to



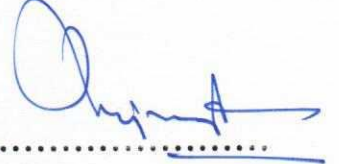
be delivered latest by 08.11.2012. Going by the assertion now being made by the respondent's counsel, the promoter will offer possession only in February 2021. Such unilateral conduct of the respondent for changing date of delivery of possession has caused harassment to the complainant and therefore, the Authority deems it proper to direct the respondent that the amount of interest payable on account of delay in delivery of possession shall be calculated separately from the deemed date of possession i.e. 08.11.2012 to the date of filing of present complaint and the amount so assessed, shall be paid to the complainant within 45 days of uploading the order on the website of the Authority. The amount of interest payable from the date of filing of present complaint till the date of actual offer of possession shall be later adjusted against the balance dues recoverable from the complainant.

6. For the reasons recorded above, the complaint deserves to be allowed by issuing a direction to the respondent to deliver the possession to the complainant by February, 2021 and to pay interest to the complainants in the manner indicated earlier. The Authority on the basis of details furnished by the complainant has calculated the interest on the amount already paid by the complainant which works out to Rs. 17,82,934/- and this amount shall be paid to the complainant within 45 days of uploading the order on the website of the Authority. The balance amount of interest payable till the date of actual offer of



possession shall be adjusted against the balance dues recoverable from the complainant.

7. The complaint is disposed of in the above terms. File be consigned to the record room after uploading of the orders on the website.



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RAJAN GUPTA
(CHAIRMAN)



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ANIL KUMAR PANWAR
(MEMBER)



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DILBAG SINGH SIHAG
(MEMBER)

