



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2663 OF 2019

Yogendra Singh and Sarita Devi

....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: 2nd

Present: Shri Arjun Kundra, Counsel for the Complainant.

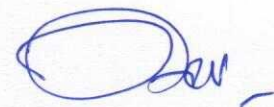
Shri Hemant Saini, Counsel for the Respondent.

ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. The complainants herein have prayed for issuance of a direction against the respondent to complete the construction of his project named Park

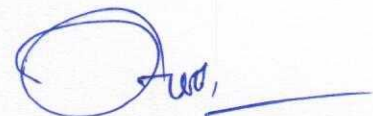
Elite Floors situated in faridabad and deliver them possession of a flat which they had agreed to purchase in the said project. Their grievance is that they had already paid to the respondent a sum of Rs.24,30,671/- and the respondent as per terms of the Builder Buyers Agreement (BBA) entered between the parties on 30.03.2010 was obliged to offer them possession latest by 11.10.2015 but the possession has not been offered till date. They have also prayed for awarding them interest on the already paid amount for the period of delay occurred in offering them possession on the agreed date.

2. The respondent in his reply has not disputed that complainants had booked a flat in his project for which builder buyer agreement was entered on 30.03.2010. However, he has denied the complainants averment on the point that they had already paid him Rs. 24,30,671/-. His denial in this regard was vague inasmuch as he has not disclosed as to what amount he had actually received from the complainants. It is quite unbelievable that respondent without receiving any amount from the complainants had executed the BBA in their favor. So, the respondent in all fairness was expected to disclose as to what payments he had actually received from the complainants and which payments on demand were not paid by them. Significantly the respondent has disclosed in his reply that he had demanded various instalments totalling to a sum of Rs. 23,62,245/- during the period spanning from 09.08.2009 to 05.09.2012 and had issued a reminder to



the complainants on 01.08.2011 because payment demanded on 30.06.2011 was not paid. This would imply that all demanded instalments except one for which reminder was issued were paid on time. The respondent in case default in payment had continued even after reminder dated 01.08.2008 was expected to either issue further reminder or else upon continuing defaults on the part of complainants to pay the amount was expected to initiate action against the complainants for cancellation of their allotment. Needless to mention that respondent has nowhere pleaded that complainants even after issuance of reminder dated 01.08.2011 had not paid the demanded amount or that he had initiated some action against the complainants for non-payment of the demanded amount. In these circumstances, vague denial on the part of respondent regarding payment of Rs. 24,30,671/- to him by the complainants is untrustworthy and the Authority will, therefore, hold that complainants had already paid Rs. 24,30,671/- to the respondent for the booked flat.

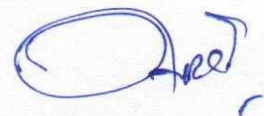
3. The matter regarding payment of Rs. 24,30,671/- can be looked into even from a different angle. Rules 24, 25 and 26 of Haryana (Development Regulations of Urban Areas), Rules, 1976 casts a duty on the promoter of a real estate project to maintain proper record of all the payments received from the allottees. If so, the respondent being the custodian of the record of payments received from the complainants should have in all fairness disclosed in his reply the exact amount



which he had already received from the complainants. Since the respondent has not disclosed the exact amount which he had already received from the complainants, the Authority has no hesitation to conclude that complainants had paid to the respondent total sum of Rs. 24,30,671/-

4. 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. 11.10.2015 till the actual date of offering possession at the rate prescribed under Rule-15 of the HRERA Rules, 2017.

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 11.10.2015. 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. 11.10.2015 to the date of filing of present



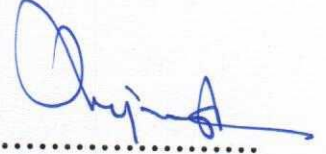
complaint and the amount so assessed, shall be paid to the complainant within 45 days of uploading the order on the website of the Authority. The amount of interest payable from the date of filing of present complaint till the date of actual offer of possession shall be later adjusted against the balance dues recoverable from the complainant.

6. The amount of interest on already paid amount of Rs. 24,30,671/-at the rate prescribed in Rule 15 from the deemed date of possession i.e. 11.010.2015 to the date of filing of present complaint i.e. 20.11.2019 works out to Rs. 10,19,563.25/- Said amount shall be paid by the respondent to the complainant within 45 days of uploading the order on the website of the Authority.

7. 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.



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



RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
(MEMBER)



DILBAG SINGH SIHAG
(MEMBER)

