



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 804 OF 2019

Shyam Nandan Kumar

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag**

**Chairman
Member
Member**

Date of Hearing: 21.01.2021

Hearing: 8th

**Present: - Mr. Dixit Garg, Ld. Counsel for complainant
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsels for respondent**

ORDER (DILBAG SINGH SIHAG-MEMBER)

In this case, complainant is aggrieved against the demand of Rs 6,25,2 12/- raised by the respondent along with offer of possession dated 16.08.2018 for allotted unit number LM-4-56 ground floor, having area of 1391 square feet which is located in respondent's project namely 'Park elite floors'. Said unit was purchased by the complainant from the original allottee namely Mr Rajinder Chawla on 03.10.2013. Builder Buyer agreement was executed between the

parties on 24.07. 2013 and in terms of it possession was supposed to be delivered up to 24.01.2016. It has been alleged that the possession was delayed by the respondent for approximately 2 years even after receiving Rs 18,03,927/- against Basic sale price of Rs 25,07,334/- and that too without any compensation for delay caused by him. So, present complaint is filed by the complainant seeking possession of the unit alongwith delay compensation in terms of clause 4.3 of agreement i.e. Rs 5 per square feet of the super area of the unit and justification of demand of Rs 6,25,212/- raised by respondent alongwith offer of possession dated 16.08.2018.

2. Complainant has submitted his statement with regard to acceptable and non- acceptable demands taking complaint number 113 of 2018 titled as Madhu Sareen vs BPTP Pvt Ltd as basis in compliance of order dated 24.10.2019. Accordingly said statement was considered by the Authority in previous order dated 01.12.2020 and certain observation in respect of non-acceptable demands pertaining to club membership charges, electrification and STP charges, electric connection charges and GST charges were decided, so said order shall be read as part of this final order.

3. Respondent has tried to explain in his reply that delay had occurred due to lack of clarity in the policy of self -certification prescribed for the developers. Because of such ambiguity, he had to submit fresh building plans in response to public notice dated 08.01.2014 issued by the Town and Country Planning



Department. It was further averred that the concerned department had clarified the policy vide order dated 08.07.2015 and therefore, there were force majeure conditions existing in respect of the project in question . Further it has been mentioned that demands raised by the respondent are in accordance with the provisions of builder buyer agreement. As far as status of the unit in question is concerned it has been stated that unit is ready for handing over physical possession along with common facilities and infrastructure which are almost completed. Moreover, respondent has also placed copy of part completion certificate dated 09.11.2017 which was taken on record in previous order.

With regard to issue of delay interest, Ld. counsel for respondent argued that subsequent allottee is not entitled for any compensation for delay by quoting para 38 of judgement dated 24.08.2020 of Hon'ble Supreme Court Civil Appeal number 6239 of 2019 titled as 'Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited'. Said paragraph is reproduced below for reference: -

*Similarly, the three Appellants who have transferred their title, right and interest in the apartments would not be entitled to the benefit of the present order since they have sold their interest in the apartments to third parties. The written submissions which have been filed before this Court indicate that "the two buyers stepped into the shoes of the first buyers" as a result of the assignment of rights and liabilities by the first buyer in favour of the second buyer. In **HUDA v. Raje Ram**, this court while holding that a claim of compensation for delayed possession by subsequent transferees is unsustainable, observed that*

"7. Respondents in the three appeals are not the original allottees. They are re-allottees to whom re-allotment was made by the appellant in the years 1994, 1997 and 1996 respectively. They were aware, when the plots were re-allotted to them, that there was delay (either in forming the layout itself or delay in delivering the allotted plot on account of encroachment etc.) .In spite of it, they took re-allotment. Their cases cannot be compared to cases of original allottees who were made to wait for a decade or more for delivery and thus put to mental agony and harassment. They were aware that time for performance was not stipulated as the essence of the contract and the original allottees had accepted the delay."

Even if the three appellants who had transferred their interest in the apartments had continued to agitate on the issue of delay of possession, we are not inclined to accept the submissions that the subsequent transferees can step into the shoes of the original buyer for the purpose of benefiting from this order. The subsequent transferees in spite of being aware of the delay in delivery of possession the flats, had purchased the interest in the apartments from the original buyers. Further, it cannot be said that the subsequent transferees suffered any agony and harassment comparable to that of the first buyers, as a result of the delay in the delivery of possession in order to be entitled to compensation.

4. After considering pleadings and submissions of the parties, Authority observed that admittedly delay has been caused by the respondent in handing over of possession to the complainant. Possession was supposed to be delivered up to 24.01.2016 in terms of BBA whereas it was offered on 16.08.2018 duly supported with part completion certificate dated 09.11.2017. So, the complainant has to be compensated for delay caused. However, it is pertinent to mention here that complainant is seeking delay compensation as per clause 4.3 of agreement but as per RERA Act, 2016 he deserves to be compensated in terms of rule 15 of HRERA

rules, 2017. Viewed from this perspective and in the interest of justice it would be appropriate that complaint should not suffer due to mistake of his counsel and he shall be entitled to delay compensation in terms of Rule 15 of HRERA Rules, 2017. i.e. SBI MCLR 2%.

Regarding objection of the respondent, it is observed that Hon'ble Apex court has ruled the aforementioned decision keeping in view the fact that three appellants (subsequent allottees) knowingly stepped into the shoes of original allottee by accepting the delay but present complaint does not get covered by the said judgment as factual position reveals that complainant stepped into shoes of original allottee on 03.10.2013 that is just after 3 months of execution of builder buyer agreement dated 24.07.2013 with the belief that developer will handover position with stipulated time as agreed therein whereas the possession was offered with delay of 2 years approximately, so the subsequent allottee (present complainant) is the one who has actually suffered agony and harassment as a result of said delay so for this reason he is entitled to claim delay compensation.

5. Further Authority directs the respondent to actually handover physical possession of the unit to complainant after receiving occupation certificate of the unit along with revised statement of account issued in terms of principles decided in complaint number 113 of 2018 incorporating therein delay interest for the period ranging from deemed date of possession to date of receiving of Occupation certificate. It is pertinent to mention here that if any interest has been charged by

respondent for the delay in making payments, the same will be charged in terms of Rule 15 of HRERA Rules, 2017 in order to maintain parity between the parties.

6. It is also decided that respondent is entitled to recover maintenance charges from the complainant with effect from date of offer of possession i.e. 16.08.2018 (duly supported with part completion certificate dated 09.11.2017) at the rate stipulated in builder buyer agreement as he is duty bound to maintain the project irrespective of the fact that whether allottees have taken possession or not.

7. With these directions, complaint is **disposed of**. Files be consigned into record room.



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]