



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 2608 OF 2019

Rajeev Ranjan

....COMPLAINANTS(S)

VERSUS

BPTP Limited

....RESPONDENT(S)

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

**Chairman  
Member  
Member**

**Date of Hearing: 19.01.2021**

**Hearing: 6<sup>TH</sup>**

**Present: Shri Arjun Kundra, Counsel for the Complainant.**

**Shri Hemant Saini, Counsel for the Respondent.**

### **ORDER: (RAJAN GUPTA-CHAIRMAN)**

1. The complainants herein have prayed for issuance of a direction to the respondent to deliver them possession of flat bearing no. H-4-07, area 1022 sq ft, situated in respondent's project Park Elite Floors Faridabad. Their grievance is

that they have already paid to the respondent a sum of Rs.24,49,184/- against basic sale price of Rs 27,69,759/-, and the respondent as per terms of the Builder Buyers Agreement (BBA) entered between the parties on 07.07.2010 was obliged to offer them possession latest by 07.07.2012 but the possession has not been offered even till date. They have also prayed for awarding them interest on the already paid amount for the entire period of delay occurred in offering them possession on the agreed date.

2. It is pertinent to mention here that complainant in paragraph 10 of his petition has stated that he has paid Rs 24,36,110/- against total sale consideration of Rs 27,69,759/-. Further complainant has filed statement of accounts in compliance of previous order dated 11.11.2020 disclosing total amount paid by complainant which is Rs 24,49,184/- alongwith copy of receipts in support of it.

3. The respondent in his reply has stated that complainant has concealed the fact that he is not original allottee. Firstly, unit in question was purchased by original allottee Mr. Dinesh Arora vide allotment letter dated 24.12.2009. Thereafter the complainant bought unit from original allottee vide nomination/endorsement letter dated 02.03.2010. The flat buyer agreement was however entered between the complainant and the respondent on 07.07.2010. Regarding status of unit it has been mentioned in para 9 and 25 of the reply that construction of unit is going in full swing and respondent-developer is making all



endeavors to handover possession shortly. However, he has denied the complainants averment on the point that he has already paid him Rs 24,36,110/-.

4. In the previous order dated 11.11.2020 the amount of delay interest was calculated as Rs 18.34/- lacs for the period ranging from deemed date of possession i.e 07.07.2012 to 03.12.2020 and respondent was directed to pay the delayed interest to the complainant upfront before the next date of hearing. Further, liberty was given to him to pay delayed interest on the admitted amount and to also make their calculations in respect of the disputed amount if any, which were to be discussed on next date of hearing.

5. Inadvertently the amount of delay interest was stated as Rs 18.34 lacs however, the correct amount/figure is Rs 19,05,194/-. Accordingly, amount of delay interest is to be read as Rs 19,05,194/-.

6. Today, Ld. counsel for complainant informed that the respondent has neither paid any amount to his client nor filed his objections to the calculations of delay interest in compliance of previous order. Ld. counsel for respondent argued that subsequent allottee is not entitled to any delay interest in support he cited para 38 of judgement dated 24.08.2020 of Hon'ble Supreme Court in Civil Appeal number 6239 of 2019 titled 'Wing Commander Arifur Rahman Khan and



Aleya Sultana and others versus DLF Southern Homes Private limited'. Relevant paras of the said judgement is reproduced below: -

*"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 an 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."*



7. The Authority has gone through the rival contentions of the parties. First of all to deal with the question of law posed by the respondent that the delay interest is not admissible in respect of a subsequent allottee, the Authority is unable to agree with the contention of the learned counsel for the respondent. In this case, the original allottee was allotted an apartment in question on 24.12.2009, thereafter the complainant stepped into the shoes of the original allottee barely 2.5 months after that i.e. on 02.03.2010. Furthermore, flat buyers agreement was entered into between the present complainants and the respondent. The complainants are not claiming the right through the previous allottee. They are claiming their right in respect of the delay interest by virtue of the Flat Buyers Agreement executed by themselves on 07.07.2010. There being no reference to the previous allottee rights and liabilities of the present parties have to be determined in accordance with the Flat Buyers Agreement executed between the promoters and the present complainants on 07.07.2010. The deemed date of possession calculated to be 07.07.2012 has been worked out in terms of Flat Buyers Agreement executed on 07.07.2010. For all practical purposes, the present complainants are like an original allottee. Otherwise also, a subsequent allottee barely three months after the date of the original allotment must be treated at par with the original allottee. The ratio of cited judgments of Hon'ble Supreme Court



is that a subsequent allottee who is aware of the problems of a project of long delay already having been caused in developing the project shall be deemed to have waived off its rights by purchasing the property with all the defects and delays. In this case, the present complainants had entered into the shoes of the previous allottee barely three months after the original allotment and more important he is not claiming any right through the previous allottee. Instead they are claiming their rights by virtue of Flat Buyers Agreement executed between the complainants and the promoters on 07.07.2010. The judgment of the Hon'ble Supreme Court is therefore not at all applicable on the facts of the present case.


8. The respondents have not filed any objection to the calculations of the amount of Rs 19,05,194/- interest to be paid to the allottee for causing such inordinate delay in handing over the possession. In fact, the possession is still not handed over to the complainants nor any specific date for completion of the project has been communicated. Accordingly, the Authority hereby confirms the calculations of delay interest payable amounting to Rs 19,05,194/- upto 03.12.2020. This amount must be paid by the respondent upfront to the allottee within a period of 90 days from the date of uploading of this order on the website portal of the Authority. Further interest at the same rate 9.30% i.e. SBI MCLR+2% shall also be payable on monthly basis starting from 04.12.2020 till



the date of handing over the legal and valid possession of the apartment to the complainants. Said monthly interest comes to Rs 18,981/-.

9. **Disposed of** in above terms. Order be uploaded on the website of the Authority and file be consigned to the 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]**