

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

Complaint No. RERA-PKL 203 of 2018

Chandan Kumar Senapati.

...Complainant.

Versus

M/s. Ruhil Promoters Pvt. Ltd.

...Respondent.

Date of hearing:- 16.01.2019 (5th Hearing)

Coram:- Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance:- Shri C.K. Senapati, complainant in person.
Shri Kamal Dahiya, Advocate for respondent.

ORDER:-

There is no dispute between the parties on the point that the complainant was allotted a flat measuring 1250 Sq. fts. in respondent's project named "Ruhil Residency" situated in Sector-3, Bahadurgarh and he has already paid Rs. 32,30,333/- out of the basic sale price of Rs. 34,80,000/-. The parties had signed the buyer's agreement on 5.9.2015, according to which the respondent was required to deliver possession to the complainant by June, 2016.

2. The complainant's grievance is that the respondent has not completed the project and there is no likelihood of delivery of possession to him in near future.

So, he has prayed for the refund of the amount alongwith interest and for awarding compensation for mental agony and harassment.

3. The respondent during the course of hearing held on 21.08.2018 had informed the Authority that they will apply for occupation certificate by December, 2018 and will compensate the complainant as per the agreement before offering possession. Complainant on that day requested the Authority to compute the delay compensation till date of actual possession. The Authority upon such hearing has orally disposed of the matter directing the respondent to deliver possession to the complainant within six months and to compensate him for the delay period.

4. Thereafter, detailed order was prepared directing the respondent to apply for occupation certificate within three months and to offer possession to the complainant within six months. It was mentioned in the order that the compensation will be computed per the provisions of buyer's agreement upto the date of actual offer of possession. The order so drafted was signed by the Hon'ble Chairman and one of the Member but when the file reached the other Member of the Authority, he had noticed that the deemed date of possession in the present case was June, 2017 and the default liability for paying compensation for the delay period had accrued only after coming into force of the Real Estate (Regulations and Development) Act, 2016 [in short RERA Act]. So, the learned Member requested the Authority to reconsider the matter



on the question of awarding interest to the complainant for the delayed period at the rate as stipulated in Rule-15 of the Haryana Real Estate (Regulations and Development) Rules, 2017 [in short HRERA Rules] rather than as per buyer's agreement. It was then that the Authority has decided to re-hear the parties on the question of awarding interest for delayed period.

5. Today, complainant and the respondent's counsel have been heard and record has been perused.

6. The parties have not disputed before this Authority that the buyer's agreement executed between the parties, which is available at page 35 of the paper book, contains Clause No. 6 whereunder the promoter for any default occurring on the part of the allottee in payment of instalments was entitled to charge interest @ 18% per annum, whereas, Clause-9(iii) of the said agreement was entitling the allottee to have a compensation @ Rs. 5/- per square feet of super area of the purchased unit per month i.e. around 3.7% per annum for the delay occurring on the part of the promoter in offering timely possession. As per Section 2(z) of the RERA Act, there has to be a parity in the rate of interest payable by the allottee and the promoter for their respective defaults towards each other. Rule-15 of the HRERA Rules, 2017 provides for awarding interest at the rate of State Bank of India highest marginal cost of landing rate (MCLR) plus 2% for the promoter as also for the allottee in case of default of one towards the other for payment of instalment or delivery of possession, as the




case may be. So, this Authority is bound by the spirit of statutory provisions referred to above and has no option except to follow Rule 15 of the HRERA Rules for awarding interest to the complainant towards the delay occurring on the part of the respondent in handing over timely possession.


7. Faced in such situation, learned counsel for the respondent has argued that awarding of interest at the rate stipulated in Rule-15 in the present case will now tantamount to review of order dated 21.08.2018 and therefore, it is not permissible for this Authority to change the rate of interest more than what was awarded vide order earlier passed on 21.08.2018. The Authority, however, will not accept the arguments because it is of the considered opinion that Section 39 of the RERA Act, 2016 permits the Authority to amend its orders within a period of two years from the date of order with a view to rectify any mistake operating from record. The mistake of the kind as pointed out by Hon'ble Member of the Authority with regard to award of interest was in respect of statutory provisions which this Authority is bound to follow. So, the Authority has jurisdiction to rectify the mistake in order to award interest in consonance with the provisions of Rule-15 of the HRERA Rules, 2017

8. The complaint is accordingly **disposed of** with the direction that the respondent besides applying for occupation certificate within three months and offering possession to the complainant within six months, shall pay interest to the complainant at the rate of State Bank of India highest marginal cost of



landing rate (MCLR) plus 2% from the deemed date of possession i.e. 1st July, 2017 till the delivery of actual possession. File be consigned to the record room.

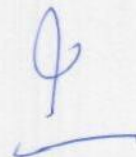

Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member

Rajan Gupta
Chairman

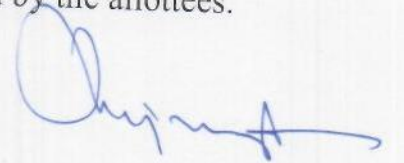
Certain important portions of this case have been recorded in the orders dated 14.11.2018 passed by the DB comprised of two Hon'ble Members of this Authority. The said order shall be read as a part of this orders.

2. Vide orders dated 31.8.2018 in complaint case No.113 of 2018- Madhu Sareen Versus BPTP Ltd. the two Hon'ble Members had laid down certain principles for awarding compensation to the complainants for delayed offer of possession of apartments. The undersigned had different view in this regard. The reasons for the different view was explained in detail in complaint case No.49 of 2018- Parkash Chand Arohi Versus M/s Pivotal Infrastructures Ltd. The undersigned is of the view that some delay in real estate projects is likely to happen and must be accepted because such projects are very complex to execute. Some reasonable delay of upto two years therefore, deserves to be compensated in accordance with the provisions of the agreement. However, if the project gets delayed unreasonably i.e. beyond two years then the compensation could be awarded by giving a reasonable compensatory interest. Such compensatory



interest has been determined to be @9%. While respecting the judgment authored by my colleagues, I would maintain that the principles contained in complaint case no.49/2018- Parkash Chand Arohi Versus M/S Pivotal Infrastructure Ltd. shall remain applicable.

Accordingly, in this case the deemed date of possession was June 2017. Accordingly, for the period from June 2017 to actual delivery of possession, compensation shall be allowed @ provided in clause 9(III) of the agreement i.e. Rs 5 per sq. ft. of the super area of said unit per month. This compensation shall be for a period of up to two years i.e. for the period June 2017 to June 2019. However, in case of delay thereafter i.e. beyond two years, compensation shall be @ 9% interest per annum on the entire amount deposited by the allottees.



(Rajan Gupta)

Chairman