



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1050 OF 2018

Raj Kumar Dimania

....COMPLAINANTS(S)

VERSUS

BPTP Limited and others

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 27.07.2021

Hearing: 11th

Present: Shri Himanshu Raj, Counsel for the Complainant.

Shri Hemant Saini and Shri Himanshu Monga, counsel for the respondent.

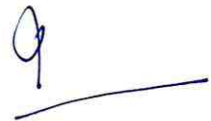
ORDER: (RAJAN GUPTA-CHAIRMAN)

1. On receipt of this complaint, a notice dated 14.5.2019 was issued which was successfully delivery to the respondent on 15.5.2019. The respondent

filed their reply on 17.9.2019. Today is 11th hearing of the matter. The Authority observes that the complainant had been continuously seeking adjournments since 25.2.2020. Finally, the matter was heard on merits by the Authority today.

2. The complainant's case is that an original allottee booked a constructed villa to be built on land measuring 150 Sq.yards in the respondent's project named Parklands Sector-88. The complainant thereafter stepped into shoes of original allottee and the villas was transferred in the name of the complainant by the respondent on 3.2.2006. The respondent thereafter vide their allotment letter dated 12.5.2007 allotted villa no. F8-17 to the complainant. Builder-Buyer Agreement between the parties was executed on 01.06.2008. As per clause 8(1) of the agreement the apartment was to be delivered within a period of three years from the date of sanction of the building plans. Basic sale price of the unit was Rs.23,62,500/-. As per statement of accounts dated 30.10.2018, complainant had paid an amount of Rs.20,41,361.05 by then. Complainant has enclosed receipts of Rs. 10,32,278.05 having been paid.

3. Possession of the apartment has still not been offered. As per copy of the addendum to the agreement placed at page-100 of the complaint, the originally allotted villa F8-17 was changed to Villa no. L9-22. Both promoter as well as the buyer have signed the said addendum to the agreement. Rest of the terms



and conditions of the contract were agreed to be same as shown in the original agreement.

Since, offer of possession has not been made to the complainant, he is seeking possession of his allotted allotment along with interest for delay caused in offering possession.

4. The respondent in his reply has denied the allegations made by the complainant and made the following submissions:

(i) Complainants cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. According to the respondents only the provisions of agreement shall be binding upon the parties to such an agreement. Further, under clause of 27 the agreement there is a provision for making a reference to the arbitrator in the event of a dispute. For this reason, also the jurisdiction of this Authority cannot be invoked.

(ii) The complaint involves disputed questions of fact and law for which detailed examination and cross examination of several independent and expert witnesses is needed therefore this complaint cannot be decided in a summary jurisdiction.



(iii) Authority has no jurisdiction to entertain the present complaint as respondent had applied for RERA registration of the said project on 24.08.2018.

(iv) Complainant made several defaults in making timely payments for which reminders were sent to him. Demands raised by respondent on account of EDC/IDC are well within the parameters of the agreement. EEDC has been demanded uniformly from all the customers.

(v) Delay in offering possession has also been occasioned due to inaction on the part of government or its agencies.

(vi) The respondent has denied the fact alleged by complainant that complainants got the villa transferred in their name from the original allottee. The complainant was first allotted villa no. V150-157 in the project parklands, Faridabad vide letter dated 28.03.2006 but the said allotment was tentative. Complainants were informed of the change in the layout plans which resulted in change of unit allotted to them. On 12.05.2007, complainants were allotted villa no. F8-17 tentatively measuring 150 square yards. It is denied by the respondent that the flat buyer agreement was executed after a delay



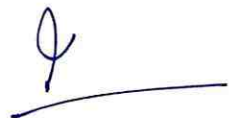
of more than 2 years. The respondent referred to clause 8.1 and 8.3 of the agreement and it is stated that possession was to be handed over within 3 years of from the date of sanctioning of building plan but the said clause was subject to force majeure and purchaser making all the payments within the stipulated time.

(vii) Respondent has denied the allegations made by complainant that they were at mercy of the respondent and the re allotted Villa no. L9-22, Sector 84 Parklands was at poorer location. It is stated that due to the exigencies beyond the control of the respondent the unit allotted to the complainant was cancelled and complainant were given two options i.e., to exit from the project and get the refund with interest @ 9% p.a. from the date of making the payment till the request for refund or opt for reallocation of villa within 12 months from the date of confirmation from the complainant. The complainant was also given an additional benefit vide letter dated 19.03.2010 that in case the possession is delayed the penalty payable by the respondent shall be ₹ 48 per square meter per month as against ₹ 24 as originally agreed between the parties. The allotment of new unit was duly agreed by the complainant and now they are raising baseless allegations against the respondent.

(viii) The respondent admits the execution of addendum to the agreement dated 28.10.2011 but denies the statement made by the complainant that as per the said addendum the possession was to be offered within 2 years. It is stated that addendum nowhere talks about the time frame for delivering possession. Further, respondent denies that it was promised that the possession will be delivered in September 2013. It is stated that the word tentative was written in that e mail as the time was not certain and depended upon sanctions and approval by concerned authorities.

(ix) Regarding the construction stage it is stated that it is at an advance stage and internal flooring including toilets and kitchen is completed in the said unit and the delay is due to the pendency of completion certificate. The unit allotted to the complainant will be ready for the possession by the end of 2019.

(x) The respondent denied that the complainants made all the payments in time and the construction is not even started or done only on ground floor. The construction was getting delayed due to the reasons beyond the control of the respondent as the layout plan for the unit was changed. The respondent admits that demand has been raised on account of EDC but denies the allegation made by the



complainant that EDC is not being deposited with DGTCP. It is stated that there is no ruling of Hon'ble supreme court vide which EDC has been stayed. Now possession can be offered to the complainant only on payment of outstanding amount.

5. Learned counsel for the complainant while submitting his oral arguments re-stated the facts of the case as produced in para 2 of this order. Further, he submitted that complainant had opted for relocation under protest however on perusal of the addendum to the agreement at page 99 of the complaint it is revealed that the agreement is duly signed and it is not under protest so this argument of the complainant is rejected by the Authority.

6. Learned counsel for the respondent in addition to his written statement has submitted his verbal arguments as follows:

(i) Complainant has signed an undertaking dated 06.08.2007 wherein it was agreed by the complainant that in the event of modifications in the layout plan/building plan of the Housing project he will accept any alternative villa at such changed location as offered to him by the company. The respondent had also submitted an application dated 12.12.2019 in which it is stated that unit no. F8-17 which was allotted to the complainant was located on a service road abutting the sector road and owing to increase in area of the project there was a

change in the layout plan of the project in the year 2011. Due to increase in area requirement of religious site occurred which falls in the category of institutional sites and the same could be located on a broad road only i.e., sector road or 24 meters wide internal circulation road. In these circumstances a new unit was allotted to the complainant in the other block bearing no. L-9-22 villa parklands. The said unit was accepted by the complainant. He further submitted that as per the undertaking signed by the complainant, he is bound to accept the alternate unit on account of modifications in the layout plan/building plan of the Housing project.

(ii) It is submitted that the delay penalty should be granted in terms of the provisions of the agreement from the deemed date of possession till the RERA Act came into force and for the period thereafter as per the provisions of the Act. A judgement of Hon'ble Apex Court was quoted titled Ganga Dhar Vs. Shankar lal and others AIR 1958 SC 770 in which the supreme court had held that since the agreements were legal, executed between the parties, thus the term and condition of the agreement containing 85 years clause as a period of redemption would not render it illegal ipso-facto. The specific argument of learned counsel for the respondent is that since allottees have entered into agreement with the respondent and there is no allegation of fraud, coercion undue influence etc., the covenants of such agreements must prevail for



deciding the rights between them. He further argued that delay interest be not given to the complainant for the time period during which lockdown was imposed in view of pandemic COVID-19.

7. The Authority after perusal of documents placed on record and after going through submissions of both parties observes as follows:

(i) There is no denial to the fact that the flat buyer agreement was executed on 01.06.2008. Further, admittedly, as per statement of accounts dated 04.09.2019 furnished by the respondent themselves the complainant has already paid an amount of Rs. 20,41,361.05 to the respondent against agreed basic sales price of Rs 23.62 lacs. Needless to mention that statutory charges over and above the basic sales price also have to be paid. None of the parties have furnished any details as to how much more money is to be paid on this account.

(ii) As per clause 8.1 of the BBA possession was to be delivered within 3 years of the date of sanction of building plans. No averment whatsoever however, has been made by the respondent as to when building plans were approved. The Authority observes that introduction of such a vague clause in the BBA and then accepting most of the consideration amount from the



complainant tantamount to unfair practice. If time of delivery of possession was to be determined from the date of sanction of building plans, then the respondent had no right to demand more money than initial booking amount already obtained from the complainant. Since substantial amounts were demanded by the respondent and were paid by the complainant the deemed date of completion of project or deemed date of possession of villa shall be taken as reasonable period from the date of execution of BBA. Market practice on the subject is that possession of a building should be offered within 42 months i.e., three years plus six months for obtaining Occupation Certificate etc. from the date of execution of BBA. As per this formula the deemed date of possession in this case works out to 01.12.2011.

(iii) Admittedly, originally allotted apartment was neither constructed nor offered by respondent to the complainant, as a consequence of which an addendum to the agreement dated 28.10.2011 was executed vide which an alternate villa L9-22 was allotted to the complainant. Even this villa has not been offered till now. Considered view of this Authority in this regard is that the complainant is entitled to interest for the entire period of delay

from the deemed date of offer of possession which is 01.12.2011 till actual offer of possession of the villa is made after obtaining OC from concerned department of the State Government.

(iv) The respondents have argued that the complainants had signed an undertaking dated 6.8.2007 to the effect that should there be any modification of the land plans or sanctioned plan in future for any reason then he shall accept such alternate villa or change super built-up area at the location as demarcated by the company for the modified lay out plan. The Authority observes that the reliance on such undertaking which was executed prior to execution of builder buyer agreement dated 01.06.2008 will have no effect on the outcome of proceedings of this complaint. Otherwise also the said undertaking is vague, one sided and unenforceable because nothing has been stated to satisfy the conditions listed in the undertaking. It is reiterated that the undertaking is rendered infructuous when date of builder-buyer agreement's is subsequent to the date of executing the undertaking. In respect to argument of learned counsel for respondent regarding waiver of delay interest for the period during which lockdown was imposed, the Authority is of view that respondent has already

delayed the project by about 10 years and complainant who has already paid Rs. 20.41 lacs is still waiting for possession of his unit, Even now the respondent has not committed any timeline for completion of unit. Further respondent cannot be allowed to take benefit of his own wrong as he himself is at fault by not completing the project within timeframe decided by himself. Had it been the case where respondent was not able to complete the project solely because of restrictions imposed by way of lockdown then the case would have been different. Here the respondent is not even able to justify the time period already lapsed on his part towards completion of project. For these reasons the argument of respondent is rejected.

(v) The respondent's arguments that first of all the matter should be referred to an Arbitrator, or that the questions in dispute is of fact and law therefore the same cannot be tried by this Authority, and that the Authority has no jurisdiction to entertain this complaint because the respondent had applied for RERA registration on 24.7.2018, holds no substance at all. In the face of the provision of Section 79, Section 80 and Section 89 of the RERA Act, all disputes relating to the real estate projects squarely falls within the

purview of the RERA Act and can be decided by the RERA. Jurisdiction of Civil Courts is specifically barred to entertain any complaint in the matter.

(vi) The Authority observes that the respondent has severely misused its dominant position. They executed the BBA in the year 2008. Due date of possession was December 2011. Now, even after lapse of 9 years respondent is not able to offer possession to the complainant. Complainants however are interested in getting the possession of their apartment. They do not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly comes into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed.

A difficulty however is being faced by the Authority that parties have produced receipts of only Rs.15.74 lacs paid from the year 2006 up to year 2016. Obviously more money has been paid as has been shown by the respondent in their statement of accounts received to the complainant in 2018 showing that an amount of Rs.20.41 lacs stand received from the complainants. The Authority,



therefore, is calculating the delay interest for an amount of Rs. 7,63,125/- paid upto the deemed date of possession from 01.12.2011 up to 27.7.2021 i.e., the date of passing this order. For this period delay interest works out to Rs. 6,85,207/-

For the remaining amounts of Rs. 4,30,487/- paid from 08.02.2012 up to 03.12.2012 the delay interest works out to Rs. 3,72,593/- for the periods ranging from February 2012 to July 2021 on various instalments paid by the complainant.

Interest on the amount over and above Rs.11,93,612/- as shown in the statement of the year 2018 is being calculated from the year 2018 till date on an amount of Rs. 4,00,000/-. It works out to Rs. 1,02,020/-

Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 11,59,820/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 15,85,194/- monthly interest of Rs. 15,821/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance

consideration amount to the respondent when an offer of possession is made to him.

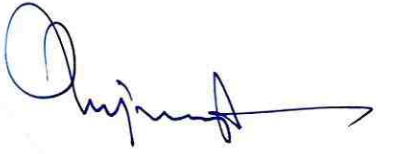
The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 15,93,612/-. Said total amount has been worked out after deducting VAT amounting to Rs 20,998.69/-, EDC amounting to Rs 1,53,600/-, EEDC amounting to Rs. 2,06,400/- and IDC amounting to Rs. 66,750/- from total amount of Rs 20,41,361.05 paid by complainant. These amounts are not payable to the builder and are rather required to be passed on by the builder to the concerned department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes and EDC, EEDC and IDC collected by a builder cannot be considered towards determining the interest payable to the allottee on account of delay in delivery of possession.

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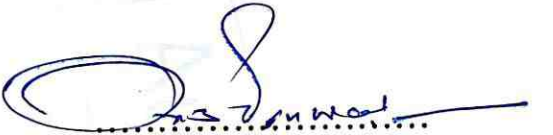
8. The Authority further orders that while upfront payment of Rs. 11,59,820/- as delay interest shall be made within 45 days of uploading of this order on the website of the Authority, the monthly interest of Rs. 15,821/- will commence w.e.f. 1st August, 2021, payable on 1st September 2021 onwards.

Disposed of in above terms. File be consigned to record room after uploading order on the website of the Authority.





RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
(MEMBER)