



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1183 OF 2020

Dhan Singh Saharan & Anr.

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 18.08.2021

Hearing:

5th

Present: -

Mr. R. P. Dangi, counsel for the complainant through video conference

Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (ANIL KUMAR PANWAR - MEMBER)

1. The complainants booked a flat in the respondent's project named 'Parsvnath Royale, Sector 20, Panchkula situated in Sector-20, Panchkula'. The booking was made in the year 2010 and Builder Buyer

Agreement (BBA) was executed between the parties on 05.09.2011. The complainants have already paid a sum of ₹50,69,816/- against the basic sale

price of ₹57,85,000/-. Their grievance is that the respondent was required to

offer them possession within a period of 42 months (36 months for construction and additional grace period of 6 months). The respondent offered

them fit-out possession vide letter dated 06.10.2020 but they had not accepted

the same because it was accompanied by various demands including the one

raised on the pretext of increase in area of the flat. The complainants plea is

that the demands are illegal and the respondent shall be directed to offer them

a valid possession after completing the flat in all respects and obtaining

occupation certificate. They also prayed for awarding them interest on the

already paid amount on account of delay in delivery of possession.

2. The Authority after hearing the parties and going through the record finds that the respondent per clause 10a of BBA was required to complete construction within 36 months from the date of commencement of the construction for the block in which complainants flat situates. The respondent in terms of the above quoted clause of BBA was entitled to avail a grace period of six months which essentially seems to be provided for obtaining completion certificate for his project. It is mentioned in clause 10a that the date of submission of application for issuance of occupation certificate shall be treated as the date of completion of the flats. The complainants in paragraph 4.4 of the complaint has categorically mentioned that the

construction had commenced on 01.02.2008. Neither the said averment was specifically denied in the corresponding para of respondent's reply nor the respondent in his pleadings has mentioned the date on which construction was commenced. So, the complainants' plea on the point that the construction started on 01.02.2008 has to be taken as correct and if so, the respondent was duty bound to complete the construction of flats within next 42 months which period had lapsed on 01.08.2011. So, the Authority has no hesitation to conclude that the deemed date of possession in this case has to be reckoned as 01.08.2011.

3. It is not disputed that the flat allotted to the complainants situates in tower T5. Respondent's plea in paragraph-6 of his reply is that tower T-5 is almost complete and fit-out possession had been offered. There is, however, no averment to the effect that the occupation certificate for tower T-5 has been applied. Needless to mention here that an allottee is obliged to accept the offer only after grant of occupation certificate to the project. Such certificate in the present case is not even applied till date. So, the complainants, in the considered opinion of this Authority, are entitled to be paid upfront interest and monthly interest per rights conferred upon them by Section 18 of Real Estate (Regulation and Development) Act, 2016.

4. In view of above, the Authority allows the present complaint with the direction to the respondent to offer possession to the complainants after obtaining occupation certificate and to pay them upfront interest on the

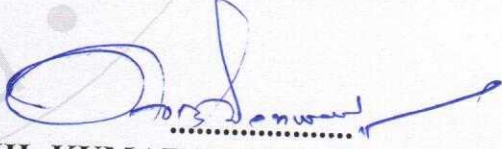
already paid amount already accrued till passing of this order as also the future interest for each month till a valid possession after obtaining occupation certificate is offered to them.

5. As regards the rate of interest, the complainants argument is that they are entitled for interest at the rate prescribed in Rule 15 of the HRERA Rules. Respondent's argument on the other hand is that the delay interest is payable only at the rate stipulated in BBA. The Authority finds that BBA provides different rates of interest in respect of complainant's default for paying timely instalments and respondent's default for timely delivery of possession. This Authority while deciding a case bearing complaint no. 113 of 2018 titled as Madhu Sareen versus BPTP Limited had adjudicated the question as to what rate of interest is payable to an allottee in those cases where there is no parity in BBA about the rates of interest payable by an allottee and the promoter in respect of their respective defaults towards each other. The majority view taken by this Authority was in that in those cases where there is disparity in the rate of interest payable by the allottee and the promoter for their respective default, the allottee deserves to be paid interest on the already paid amount from the deemed date of possession to the date of delivery of possession at the rate prescribed in Rule 15 of the HRERA Rules. So, the complainants, in view of dictum of Madhu Sareen's case, are entitled to be paid delay interest at the rate prescribed in Rule 15 of the HRERA Rules, 2017.

6. The Authority with the assistance of its Accounts Branch got the amount of upfront and monthly interest calculated and the same have been worked out at ₹47,38,181/- as upfront interest and ₹39,291/- as monthly interest. The Authority further directs the respondents at the time of sending a valid offer of possession to the complainants after obtaining the occupation certificate will also supply them a fresh statement of payable and receivable amounts. The complainants will be at liberty to file a fresh complaint for challenging the validity of any such demand which according to them is not payable by them in terms of BBA or otherwise.

The upfront amount of interest will be payable by the respondent in two installments of which first shall be paid within 45 days from the date of uploading of this order and the remainder shall be paid thereafter within next 45 days.

7. In the above terms, case is disposed of and the file be consigned to the record room after uploading the order on the website of the Authority.


ANIL KUMAR PANWAR
[MEMBER]


DILBAG SINGH SIHAG
[MEMBER]