



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 750 OF 2020

Sandeep Gupta

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Date of Hearing: 29.07.2021

Hearing: 4th

Present: - Mr. Rahul Rathore, Counsel for complainant (through video conferencing)

Mr. Himanshu Monga, Counsel for the respondent

ORDER (ANIL KUMAR PANWAR-MEMBER)

Complainant herein is seeking possession of unit no. CL-2-10-FF having area 1478 sq ft situated in respondent's project namely Park-81, Faridabad. Builder buyer agreement was executed between the parties on 04.01.2011 and in terms of clause 5.1 of said agreement, possession was supposed to be delivered latest by 04.07.2013. Complainant has already paid Rs 32,95,228/- against basic sale price of Rs 32,66,011/-. Possession of the unit was offered to

him on 19.02.2020 alongwith further demands raised under various heads for a total amount of Rs 13,04,248/-. The complainant did not accept the offer because (I) he was asked to pay unjustified demands, (ii) interest payable to him on account of delay in handing over of possession was not accounted for and (iii) the offer was silent about status of occupation certificate. Feeling aggrieved, the complainant has filed the present complaint seeking direction against respondent to deliver possession of allotted unit alongwith delay interest

2. The respondent has raised two preliminary objections viz.(I) the complaint is not maintainable because the dispute between the parties in term of BBA is liable to be adjudicated by an arbitrator and (ii) the complainant has not disclosed that the amount of Rs 32,95,228/- already paid by him against basic sale price of Rs 32,66,011/- includes the timely payment discount of Rs 1,26,060/- and inaugural discount of Rs 1,63,300/-. On merits, the respondent's plea is that his project has already received occupation certificate on 16.10.2020 and since the complainant himself has refused to accept the offer of possession, he is not entitled for delay interest.

3. Learned counsel for the parties have been heard and record has been perused.

4. The parliament has enacted the Real Estate Regulatory Authority Act for expeditious disposal of the disputes arising between the allottees and the promoters. Section 79 of the RERA Act, 2016 vests exclusive jurisdiction in the

Authority to adjudicate the matters concerning discharge of respective obligations between the allottees and the promoters. Mere clause in BBA for referring the dispute to the Arbitrator thus cannot be allowed to defeat the allottee's right for expeditious disposal of a dispute which such allottee has with the promoter and the Authority is, therefore, obliged to adjudicate the present complaint. Viewed from this prospective, the Authority don't find merit in respondent's objection regarding maintainability of the present complaint.

5. Undisputedly, the respondent had sent an offer of possession to complainant on 19.02.2020 when it had not obtained an occupation certificate. The occupation certificate was rather granted 8 months thereafter on 16.10.2020. So, the offer of possession can be deemed valid only with effect from 16.10.2020 and the complainant deserves to be awarded delay interest from the deemed date of possession i.e. 04.07.2013 till the date of receipt of occupation certificate i.e. 16.10.2020.

6. The Authority on giving thoughtful consideration to the arguments of the parties and going through the terms of BBA, decide the various demands impugned in the case as under:-

(i) Goods and Service Tax (GST)

The Government has introduced the GST in the year 2017 and since the deemed date of possession in the present cases was prior to coming into force of GST, the respondent is not justified for

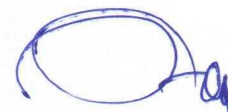
demanding the amount of GST charges from the complainant. Said amount is not payable by the complainant.

(ii) Value added tax (VAT)

Clause 1.35 of BBA renders the complainant liable to pay VAT charges and therefore, the complainant cannot be allowed to escape from paying these charges to the respondent.

(iii) Club charges

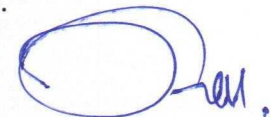
The respondent per terms of BBA is required to construct a separate building in order to provide club facility and the complainant in lieu thereof is liable to pay him membership charges of Rs 50,000/-. The complainant's grievance is that the respondent has not constructed the club building but had already collected Rs 30,000/- from him on the pretext of club charges. The respondent's argument on this point is that he has already created a facility of temporary club and therefore, the complainant in lieu of the already collected amount can avail the temporary facility and if he does not wish to avail such facility, the amount of Rs 30,000/- will be refunded to him without prejudice to respondent's right to recover Rs 50,000/- subsequently as and when the club building is completed and a full-fledged club facility becomes operational. The complainant's response in this regard is that he shall



be refunded the amount of Rs 30,000/- because he does want to avail the facility of temporary club. So, the Authority direct the respondent to refund Rs 30,000/- to the complainant without prejudice to his right of subsequently recovering Rs 50,000/- as and when the club building is constructed and a full-fledged facility of club is made available to the complainant.

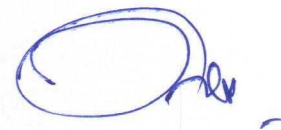
7. Learned counsel for the respondent has urged for awarding delay interest at the rate mentioned in BBA for the period prior to coming into force of RERA Act,2016. Said argument is not acceptable for the reasons already spelt out in majority judgement of the Authority rendered in another case of the respondent bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018. The dictum of said judgement, per view expressed by majority members, is that in a case where exists a disparity in the BBA about rate of interest chargeable from the builder and the allottee for defaults in discharge of their respective obligations towards each other, the the builder as well as the allottee are then liable to pay interest as per Rule 15 of HRERA Rules,2017 for default in discharge of their respective obligations for the period prior to coming into force of RERA Act,2016 and also for the period after coming into force of RERA Act,2016.

8. Adopting the aforesaid principle of Madhu Sareen's case, the Authority got the delay interest payable to the complainant calculated at the rate prescribed in Rule 15 of RERA Rules,2017 i.e. SBI MCLR+2% (9.30%).



9. The complainant per receipts produced on record has already paid a total amount of Rs. 32,95,228/- to the respondent. Said amount includes Rs.1,77,820/- paid for EDC/IDC, Rs. 1,30,854/- paid for EEDC and Rs. 29,823/- paid for VAT. The total amount of Rs.3,38,497/- (177820+130854+29823) collected under these heads was payable to the government departments and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest only to the departments entitled to receive the amounts. How can the complainant in such situation legitimately claim delay interest on the amount of Rs. 3,38,497/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 3,38,497/- is payable to the complainant. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs.29,56,730/- (3295228 - 338497).

10. The respondent has not delivered possession on 04.07.2013 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 29,56,730/- was calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (04.07.2013) till date of receipt of occupation certificate (16.10.2020).Such interest works out to Rs 18,26,197/- and it is held payable by the respondent to the complainant.



11. Respondent is accordingly directed to recalculate the impugned demands per observations made in this order and to adjust the amount of delay interest of Rs 18,26,197/-. The respondent is further directed to deliver possession to the complainant within 45 days of uploading of this order on the website. A letter alongwith revised statement of account prepared per observations made hereinbefore shall be sent to the complainant informing him about the date and time for delivery of possession atleast fifteen days prior to the date fixed for delivery of possession. The complainant is directed to deposit the balance amount within seven days of the receipt of revised statement of account and to take possession of the allotted unit on the date conveyed to him.

12. **Disposed of** in above terms. File be consigned to record room.


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RAJAN GUPTA
[CHAIRMAN]


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ANIL KUMAR PANWAR
[MEMBER]