



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in  
**COMPLAINT NO. 1132 of 2019**

Kiran K Arora

VERSUS

....COMPLAINANT(S)

BPTP Pvt. Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
 Anil Kumar Panwar**

**Chairman  
 Member**

**Date of Hearing: 28.07.2021**

**Hearing: 12<sup>th</sup>**

**Present: -** Ms. Kiran Arora, Complainant  
 Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for  
 respondent

### ORDER (ANIL KUMAR PANWAR-MEMBER)

1. Complainant herein is seeking possession of unit no. L-15-11-FF having area 1203 sq ft situated in respondent's project namely 'Park Elite Floors', situated in Faridabad. Builder buyer agreement was executed between the parties on 24.08.2010 and in terms of clause 4.1 of said agreement, possession was supposed to be delivered latest by 24.02.2013. Complainant has already paid Rs 25,09,249/- against basic sale price of Rs 22,37,003/-. Possession of the unit was offered to complainant on 12.01.2018 alongwith further demand of Rs 8,32,249/- . Said offer was not even accompanied with occupation certificate. The charges raised for cost escalation, GST, VAT, club charges and EEDC in the demand

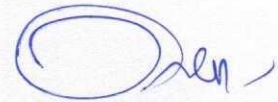


served with offer have been impugned in the complaint. The complainant did not accept the offer due to unjustified demands, non-adjustment of interest payable to complainant on account of delay in handing over of possession and for want of occupation certificate. The respondent has thereafter cancelled the allotment vide letter dated 19.11.2018 due to non-payment of demanded amount of Rs 8,32,249/-. Feeling aggrieved present complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit alongwith delay interest and to restrain respondent from demanding excess amount except already agreed in BBA.

2. The respondent has contested the complaint and has raised the objection regarding its maintainability averring that the dispute between the parties in term of BBA is liable to be adjudicated by an arbitrator. Another preliminary objection raised by the counsel is that the complainant has not paid a sum Rs 25,09,249/- towards total sale consideration of Rs 23.76 lakhs. The project has already received the occupation certificate on 07.09.2018 and since the complainant herself has refused to accept the offer of possession, she is not entitled for delay interest.

3. The Authority after hearing the arguments of both the parties observes and decides as follows:

(i) Maintainability of complaint





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 plea of the respondent on the point that the matter needs to be referred to the arbitrator is rejected.

(ii) Offer of possession

It has been alleged that allotment of booked unit was cancelled by the respondent on 19.11.2018 due to non-payment of demand issued alongwith offer of possession. At the time of cancellation of allotment of unit, the respondent was already in receipt of Rs 25,09,249/- which is more than the basic sale price of unit. Complainant's act of not paying the demanded amount due to non-adjustment of delay interest was therefore for a valid cause and the alleged cancellation deserves to be quashed.

Moreover, possession was offered to complainant on 12.01.2018 at a time when the project had not received occupation certificate and therefore, the offer made was not a valid offer. If so, the promoter's conduct in asking the complainant who



had already paid more than basic sale consideration amount, to meet additional demands was not justifiable. The alleged cancellation for this reason is also not tenable and is therefore, quashed.

(iii) Delay interest

The complainant per receipts produced on record has paid a total amount of Rs 25,08,975/- which includes even the amount of Rs 1,65,055- for EDC/IDC and Rs 97,830/- for EEDC. The amount of EDC/IDC and EEDC is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. So, it can be said that the amounts collected by a builder for passing over to other department/authorities cannot be taken into account for determining the interest payable to the allottee towards delay in delivery of possession.

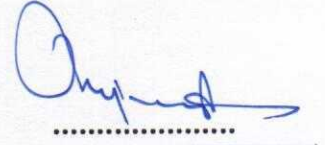
The respondent has not delivered possession on 24.02.2013 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 22,46,090/- was calculated in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 24.02.2013 (deemed date of possession) to 07.09.2018 (date of occupation



certificate). Such interest works out to Rs 11,56,601/- and it is held payable to the complainant by the respondent.

5. As regards the impugned demands in respect of cost escalation, GST, VAT, club charges and EEDC, the Authority directs the respondent to review these demands in consonance with the principles already laid for assessment of these demands in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018. The respondent shall therefore calculate the amount of above mentioned demands in consonance with the principles of Madhu Sareen's case and send the same to complainant within 45 days of uploading of this order. While preparing the statement of receivables and payables the respondent shall adjust the amount of Rs 11,56,601/- assessed by this Authority as amount of delay interest payable to complainant. The complainant is also directed to pay the balance dues within 45 days of receipt of revised demand letter.

6. **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]