



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 151 of 2021

Koyalgeet Kaur & Ranjan Kocchar

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Anil Kumar Panwar  
Dilbag Singh Sihag**

**Chairman  
Member  
Member**

**Date of Hearing: 28.09.2021**

**Hearing: 2<sup>nd</sup>**

**Present:** Mr. Arjun Kundra, Counsel for the complainant  
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the  
respondent.

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

Complainants had booked a unit in respondent's project 'Park Elite Floors' situated in Faridabad on 26.05.2009. Allotment letter for unit no.E-16-19-SF having area of 1203 sq ft was issued to them on 24.12.2009. Thereafter respondent vide allotment letter dated 27.09.2012 had informed them about the



allotment of another unit bearing no. P-8-08-SF having area of 1203 sq ft without taking any consent for it. Builder buyer agreement for unit no. P-8-08-SF was executed between the parties on 01.03.2013 and in terms of clause 4.1 of it the, possession was supposed to be delivered by 01.09.2015 (24+6 months). It has been alleged that respondent has not offered possession of the unit even after receiving Rs 25,87,306/- against basic sale price of Rs 22,37,003/-. Feeling aggrieved, this complaint has been filed by the complainants seeking direction against the respondent to deliver possession of unit alongwith delay interest.

2. Respondent in their reply have denied the allegations made by complainant and has made following submissions: -

(i). Complainant cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. Both parties are bound by the terms of builder buyer agreement. Complainant has filed this complaint despite as per clause 33 of the agreement dispute involved herein was supposed to be referred to an arbitrator. Further, present complaint involves disputed questions of fact and law requiring detailed examination and cross examination of several independent and expert witnesses and therefore it cannot be decided in a summary manner by this Authority. For these reasons, jurisdiction of this Authority cannot be invoked in this matter by the complainant.

(ii). Present complaint is not maintainable as the allegations raised by the complainants require proper adjudication by tendering evidence, cross



examination etc. and therefore ought not be adjudicated in a summary proceedings.

(iii). Complaint is liable to be dismissed in as much as the unit in question is an independent floor being constructed over a plot area tentatively admeasuring 111.76 sq meters. As per section 3 (2) (a) of RERA Act,2016 registration is not required for an proposed to be developed that does not exceed 500 sq meters.

(iv). Regarding delay caused in offering possession of the allotted unit it has been stated that delay has been occasioned due to inaction of the government or its agencies , hence, it should be inferred that any delay has been unfortunately caused due to force majeure circumstances beyond control of the developer. Further, it has been stated that the booking of the unit was accepted by the respondent on the basis of self certification policy issued by DTCP, Haryana. In terms of said policy ay person could construct building in licensed colony by applying for approval of building plans to the Director or officers of department delegated with the powers for approval of building plans and in case of non-receipt of any objection within the situated time , the construction could be started. Respondent applied for approval of building plans but they were withheld by the DTCP despite the fact that these building plans were well within the ambit of building norms and policies. Since there was no clarity in this policy to effect that whether the same is applicable to individual plot owners only and excludes the developers/colonizers the department vide notice dated 08.01.2014 granted



90 days time to submit requests for regularization of construction. Thereafter vide order dated 08.07.2015 DTCP clarified that self certification policy shall also apply to cases of approval of building plans submitted by colonizer/developer but did not formally released all the plans already submitted by respondent.

(v). Regarding re-allotment of unit from E-16-19SF to P-8-08-SF it has been submitted that the complainants were duly informed that due to the reason beyond the control of respondent the unit of complainants was changed. At that time complainants were given an option to seek refund of paid amount @9% or to accept the allotment of new unit. Complainants without any protest had accepted the re-allotment letter so now they cannot agitate upon the issue of re-allotment of unit no. P-8-08-SF.

(vi). Regarding status of the unit in para 4.3 (t) of the said reply it has been stated that construction work of unit is in progress and possession will be handed over soon to the complainant.

3. Learned counsel for complainant has re-stated the facts stated in para 1 of this order.

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

(i) That the builder buyer agreement was executed between the parties with mutual consent and are free from any of the vices of the Contract Act, 1872 viz.



misrepresentation, fraud, coercion and undue influence. Since this Authority has already held that the agreements are sacrosanct and their covenants cannot be re-written, thus it is prayed that delay penalty should be granted in terms of the covenants of the agreement from the deemed date of possession till the Act came into force and for the period thereafter, as per the provision of RERA Act, 2016. A judgement of Hon'ble Apex Court is quoted titled as Ganga Dhar Vs. Shankar Lal and others AIR 1958 SC 770 in which the Hon'ble Supreme Court had held that since the agreements were legally and valid, executed between the parties, thus terms and conditions 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 as the allottees have entered into agreement with the respondent and there is no fraud, coercion, undue influence etc. therefore covenants of such agreements must prevail for deciding rights between the parties.

(ii) Clause 4.3 relating to delay penalty has been specifically incorporated in BBA. Fact remains that both parties had mutually understood that there may be delay in completion of the project for which complainants-allottee would be compensated at a rate agreed between parties which in this case is Rs 5/- per sq ft per month. Delay penalty should be paid as per terms and conditions of the agreement till RERA Act, 2016 came into force and thereafter as per provisions of the Act. In support of his argument, he referred to judgement passed in case of



Neelkamal Relators Suburban Pvt Ltd and another vs Union of India and others wherein it was observed by Hon'ble Apex Court that RERA Act,2016 is prospective in nature and that the penalty under section 18,38,59,60,61,63 and 64 is to be levied prospectively and not retrospectively. Besides this, an affidavit cum undertaking dated 05.04.2013 has been signed by complainant wherein he had specifically undertaken that he shall have no objection regarding relocation/change/modification of super area of unit and tentative layout/building plans and also undertook not to hold respondent-company liable for the delay due to modification/revision in tentative layout plan during construction of the floor.

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

(i) Maintainability of complaint

The respondent's argument that first the matter should be referred to an Arbitrator, or that questions in dispute are a mixed questions of facts and law therefore the same cannot be tried by this Authority and that the Authority is not having jurisdiction to entertain such complaints because builder buyer agreement was executed much prior to coming into force of RERA Act,2016, holds no ground in the face of the provision of Section 79, Section 80 and Section 89 of the Act by virtue of which all disputes relating to the real estate projects falls within the purview of the RERA Act and can be adjudicated upon by RERA after coming into force of the Act. The jurisdiction of Civil Courts has been specifically



barred to entertain any such complaint in the matter. While RERA Act will not adversely affect lawfully executed agreements between the parties prior to its coming into force in terms of the principles laid down by this Authority in complaint no. 113/2018 Madhu Sareen vs BPTP and complaint no. 49/2018 Prakash Chand Arohi vs Pivotal Infrastructure Pvt Ltd, but after its enactment all disputes arising out of those agreements can be settled only by the Authority and jurisdiction of civil Court stands specifically barred in terms of section 79 of the Act. For this reason, challenge to the jurisdiction of the Authority cannot be sustained.

Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floors being constructed on the plots measuring 500 Sq. Mtrs., it is observed that the respondent is developing a larger colony over the several acres of land. One portion of the project is floors on small size of plots, 3 to 4 flats are being constructed on each floor and the same are being sold to different individuals. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that since the plot does not exceeds 500 Sq. Mtrs, the jurisdiction of this Authority is untenable. The provisions of Section 3(a) are applicable, if the total project area is assessed less





than 500 Sq, Mtrs. If such area in the larger colony in fact run into several acres, the arguments of the respondents in this regard is hereby rejected.

(ii) Undertaking

The respondent has argued that complainant had signed an undertaking dated 05.04.2013 to not to hold liable the respondent for any delay caused in delivery of possession. Learned counsel for the respondent argued that complainant himself has given an undertaking that he will not hold respondent responsible for any delay in offer of possession caused due to any act on account of any changes, modifications, revisions in the tentative lay out building plans during construction/completion of the floor. In this regard Authority observes that in this case delay of more than 6 years has already taken place and the complainant who has already paid 90% of basic sale price is still waiting to have possession of his unit. Factual position remains that builder buyer agreement was executed on 01.03.2013 and the aforesaid undertaking was signed on 05.04.2013. The Authority observes that firstly it has not been demonstrated by respondents that the delay has occurred due to change of layout plans etc therefore the undertaking will not come into play at all. Plea of the respondent that town and country planning department had delayed in approval of building plans also cannot be accepted because the respondent had no right to demand almost entire sale consideration from the complainant without obtaining approval of building plans, the respondent had no right to demand any money beyond 10% booking amount.



When respondent demanded entire consideration amount, it is to be presumed that they have obtained all requisite approvals. On this account complainant cannot be put to any disadvantage for no fault of his. Fairly and squarely only respondent is to be held liable on this account. Secondly, the said undertaking is vague and unconscionable and one sided. It was got signed 1 month after signing of BBA and after the allottee had paid about 35% of the basic sale price. After payment of substantial amount, the allottees are left with no choice but to sign the documents as are presented to them by the respondent company. The Authority, therefore, is of considered view that said undertaking will have no effect for mitigating the liability of respondents towards allottee for delay caused in handing over the possession. Accordingly, as per principles pertaining to delay interest decided in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd, the complainants-allottee are entitled to delay interest in terms of Rule 15 of HRERA Rules, 2017 for the entire period of delay from the deemed date of possession i.e. 01.09.2015 upto the date actual possession is offered after obtaining occupation certificate.

(iii) Offer of possession

Factual position reveals that no offer has been yet made by the respondent to the complainant. In written statement respondent has stated that possession will be offered soon to the complainant. But no specific timeline has been provided. In these circumstances, the respondent is directed to offer possession of unit to the



complainant after receiving occupation certificate in terms of principles already decided in complaint no. 113/2018-Madhu Sareen vs BPTP Pvt Ltd.

(iv) Delay interest

In furtherance of above mentioned observations, it is decided that upfront payment of delay interest amounting to Rs 13,51,711/-calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 01.09.2015 (deemed date of possession) to 28.09.2021 (date of order) is awarded to the complainant and monthly interest of Rs 18,537/- shall be payable upto the date of actual handing over of the possession after obtaining occupation certificate. The Authority further orders that the complainants will remain liable to pay the balance consideration amount to the respondent as and when a valid offer of possession duly supported with occupation certificate is made to them.

7. At this stage Id. counsel for respondent has argued that time period during which lockdown was being imposed in view of pandemic COVID-19 be exempted from said delay interest. In this regard, Authority is of view that respondent has already delayed the project by 6 years approximately and complainant who has already paid around 95% of basic sale price is still waiting for possession of his unit, even of today respondent has not committed any timeline for completion of unit. Evenmore respondent cannot be allowed to take benefit of his own wrong as he himself who is at fault by not completing the project within timeframe decided by himself cannot make a prayer to exempt



lockdown period for awarding delay interest. 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 argument of respondent is rejected.

8. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 23,91,840/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of VAT amounting to Rs 25,861/- and Rs 1,69,605/- paid on account of EDC/IDC from total paid amount of 25,87,306/-. The amount of such taxes is not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only 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 collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

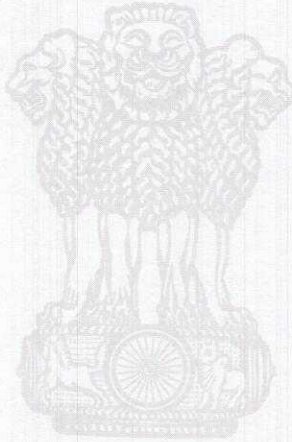




9. It is added that if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

10. Respondent is directed to pay the complainants an amount of Rs 13,51,711/- as upfront delay interest within 45 days of uploading of this order on the website of the Authority. The monthly interest of Rs 18,537/- will commence w.e.f. 28.10.2021.

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



सत्यमेव जयते

.....  
RAJAN GUPTA  
[CHAIRMAN]

.....  
ANIL KUMAR PANWAR  
[MEMBER]

.....  
DILBAG SINGH SIHAG  
[MEMBER]