



Complaint no. 880 & 881
of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 880 of 2019

Surendra Yadav

VERSUS

....COMPLAINANT(S)

BPTP Pvt. Ltd

....RESPONDENT(S)

COMPLAINT NO. 881 of 2019

Manoj Kumar

VERSUS

....COMPLAINANT(S)

BPTP Pvt. Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 28.07.2021

Hearing: 14th

Present: Mr. Surendra Yadav, Complainant through VC in complaint no. 880/2019
Mr. Manoj Kumar, Complainant through VC in complaint no. 881/2019
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for respondent in both complaints

ORDER (ANIL KUMAR PANWAR-MEMBER) :-

The grievances raised in the above captioned two complaints are similar and are based on almost identical facts. So, these complaints are being disposed of by this order on borrowing the factual matrix from the complaint case No. 881 of 2019 titled as Manoj Kumar vs BPTP Pvt Ltd which is taken as lead case.

2. The complainants booked floors in the year 2015 in respondent's project named as "Park Elite Floors" situated in Faridabad. Builder Buyer Agreement (BBA) was executed between the parties and units bearing Nos. E-80-FF and E-80-GF were allotted to the complainant Nos. 1 and 2 respectively.
3. The respondent in terms of BBA has agreed to deliver possession to the complainants by 09.12.2018 but the actual offer to complainants for possession was sent on 22.06.2018 alongwith statement of accounts whereby, the complainants were asked to pay additional amount of Rs. 38,09,426/- and Rs. 46,16,126/- respectively. The complainants' grievance is that various charges demanded by the respondent are not legally tenable and the respondent has not adjusted the amount of interest payable to them on account of delay in handing over possession. So, the complainants have prayed for issuing directions to the respondent to deliver them possession after quashing of the impugned demands and for awarding them delay interest.
4. The respondent's plea is that he had obtained occupation certificate for the project on 07.09.2018 and since the complainants despite having been offered possession vide letter dated 22.06.2018 have not discharged their duty to take possession and pay the demanded amount, no relief is warranted in their favour either for issuing directions to handover possession or for payment of delay interest.
5. Learned counsels for the parties have been heard and record has been perused.



6. The respondent per clause 6.1 of BBA was required to handover possession within 42 months from the date of execution of BBA and the deemed date of possession thus comes to 09.12.2018. A copy of the occupation certificate was attached with respondent's reply as Annexure R-7 and it proves that the project was granted occupation certificate on 07.09.2018. The complainants have not disputed that they have received the offer of possession on 22.06.2018. The offer made on 22.06.2018 was not valid for want of occupation certificate but after grant of occupation certificate, the offer of possession attained validity on 07.09.2018. The complainants' plea for award of delay interest is not justified because valid offer of possession stood made to them on 07.09.2018 prior to the deemed date of possession i.e. 09.12.2018. Accordingly, the Authority will hold that the complainants are not entitled to delay interest.

7. As regards of impugned demands, the Authority observe as under:-

I. **Preferential Location Charges (PLC):-**

The units allotted to the complainants are situated on 30 mtrs wide road. Such units per clause 3.1.2 of BBA falls in the category of Preferential Location units and therefore, the amount of Rs. 4,36,471/- charged as PLC is justified and payable by the complainants.

II. **Goods and Service Tax (GST):-**

The Government has introduced the GST in the year 2017 and since deemed date of possession in the present cases falls on a date after

the coming into force of GST, the respondent is justified for demanding an amount of Rs. 4,79,008/- as GST charges from the complainants. Said amount is payable by the complainants.

III. **VAT Charges:-**

Clause 1.22 of BBA renders the complainants liable to pay VAT charges and therefore, the complainants cannot be allowed to escape from paying these charges to the respondent.

IV. **EEDC:-**

Regarding levying of EEDC charges, the matter is sub-judice before the Hon'ble Punjab and Haryana High Court, Chandigarh. It is ordered that the respondent if had already collected some amount towards EEDC from the complainants and had not passed over the same to the State government, then the said amount shall be adjusted towards outstanding dues of complainants. However, if the collected amount of EEDC had already been deposited with State government, the details thereof shall be supplied to the complainants for the purpose of recovering the same from the State government. The respondent in view of the stay granted by Hon'ble High Court will not be entitled to recover further EEDC from the complainants till the matter is decided by Hon'ble High Court.

V. **EDC/IDC:-**



An amount of Rs. 2,33,640/- for EDC/IDC is payable by the complainants in view of clause 3 of BBA.

VI. **Electrification and STP charges:-**

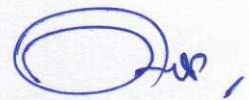
An amount of Rs. 87,660/- being charged by the respondent for electrification and STP are payable by complainants per clause-3 of BBA.

VII. **Security deposit:-**

A specific question was posed to respondent's counsel as to how an amount of Rs. 70,863/- can be charged under the head of *security as fixed deposit/bank guarantee on account of VAT* when the complainants are already being asked to pay a specific amount of VAT and GST charges. Learned counsel for the respondent could not furnish any satisfactory explanation for demanding security for VAT/GST on one hand and at the same time actual payment of VAT/GST charges. More so when there is no mention in the BBA that the complainants are liable to pay security in the form of FD/Bank Guarantee in respect of VAT/GST charges. So, the demand of Rs. 70,863/- raised in the guise of security on VAT is quashed and the complainants are not liable to pay these charges.

VIII. **Meter connection charges:-**

The respondent by filing additional reply on 02.09.2021 has furnished the justification of charging Rs. 25,000/- as meter



connection charges. It is borne out from the averments in the additional reply that these charges were calculated on the basis of expenditure incurred for procuring various items required towards providing of electricity meter for use in the units allotted to the complainants. The average price of each item has been distinctly mentioned in the additional reply. The complainants could not produce any material to indicate that the average price mentioned in the additional reply is in any manner exorbitant or unfair. So, the Authority hold that these charges are payable by the complainants.

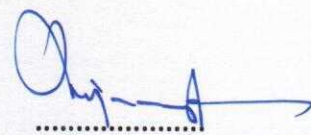
IX) **Maintenance charges:-**

The respondent was entitled to levy maintenance charges in accordance with clause 1.15 and 3.1.9 of BBA. The complainants have argued that the maintenance charges are not payable by them because they had not yet taken possession of their respective units. As earlier held, a valid offer of possession would be deemed given to the complainants w.e.f 07.09.2018 when the project had obtained occupation certificate and therefore mere fact that complainants had not occupied the allotted units will not constitute a ground for exempting them from paying maintenance charges. The complainants, in the considered opinion of this Authority are liable to pay maintenance charges with effect from 07.09.2018.




8. The complainants had agreed to purchase the units in the respondent's project on the basis of super area which is shown in the BBA as measuring 1186 Sq. fts. The area of the units of which possession was offered to the complainants is also shown as 1186 Sq. fts. in the letter containing offer of possession. So, the complainants' grievance on the point that the area of the allotted units has decreased is not justified.

9. For the reasons recorded above, the respondent is directed to send a statement of outstanding dues in consonance with the observations made in this order within 30 days of its uploading on the website of Authority. The complainants are directed to deposit the outstanding dues within 30 days of receipt of revised statement of accounts. After timely deposit of dues by the complainants, the respondent shall handover physical possession of allotted units to the complainants within 15 days of the deposit of outstanding dues. In case the complainants commit default in paying the outstanding dues within the above mentioned time, respondent will be at liberty to initiate the process of cancellation of the allotted units. With these directions, present complaints stand **disposed of**. File be consigned to the record room after uploading of this order on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]