



Complaint no. 2668 OF 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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### COMPLAINT NO 2668 of 2019

Pawan Tyagi

....COMPLAINANT(S)

VERSUS

BPTP Pvt. Ltd.

....RESPONDENT(S)

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

**Chairman  
Member  
Member**

**Date of Hearing: 28.09.2021**

**Hearing: 9<sup>th</sup>**

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

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

Complainant had booked a unit in respondent's project- 'Park Elite Floors' situated in Faridabad on 11.06.2009. Allotment letter for unit no. PE-48-FF having area of 1025 sq ft was issued to him on 06.10.2011.

Builder buyer agreement was executed between the parties on 02.02.2010 and in terms of clause 5.1 of said agreement, possession was supposed to be delivered by 02.08.2012 (24+6 months). Complainant has already paid Rs 21,52,442/- against basic sale price of Rs 19,69,329 /-. Possession of the unit was offered to the complainant on 15.06.2018 alongwith further demand of Rs 4,50,333/-. Said offer was not supported with occupation certificate. In the demand letter charges raised on account of GST, club charges and interest on delayed payments have been impugned. The complainant claims that he did not accept offer of possession due to unjustified demands, non-adjustment of interest payable to complainant on account of delay in handing over of possession and for the want of occupation certificate. Feeling aggrieved, this complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit alongwith delay interest and to also quash unjustified demands.

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

(i) Complainants 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). In respect of payment made by complainant it has been submitted that complainant has till date earned timely payment discount of Rs 89,145/- alongwith inaugural discount of Rs 80,400/-.

(iii). After completing construction work of the unit, offer of possession was made to complainant on 15.06.2018 alongwith demands on account of various charges which were duly agreed between the parties as per terms of BBA. All these charges demanded by respondent are in consonance with the terms of BBA. It is the complainant who is at fault by not coming forward to take possession of the unit after paying due amount as demanded alongwith offer of possession.

(iv) Respondent has already terminated the allotment of unit in view of complainant's default of non-payment of demand raised with offer of possession vide letter dated 17.08.2019.

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



(i) That the builder buyer agreement was executed between the parties with mutual consent from any of the vices of the Contract Act, 1872 viz. misrepresentation, fraud, coercion and undue influence. Since this Authority has already held that agreements made between the parties 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 was 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 validly executed between the parties, 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 had entered into a lawful agreement with the respondent and there is no element of fraud, coercion, undue influence etc. therefore covenants of such agreements must prevail for deciding rights and liabilities between the parties.

(ii) Clause 5.3 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.

4. 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.

(ii) Offer of possession

It has been alleged that allotment of booked unit was cancelled by the respondent on 17.08.2019 due to non-payment of demand of Rs 4,50,333/- issued alongwith offer of possession. At the time of cancellation of allotment of unit, the respondent was already in receipt of Rs 21,52,442/- 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 a valid ground for non-acceptance of offer, therefore the alleged cancellation deserves to be quashed.



Admittedly, the respondent had sent an offer of possession to complainant on 15.06.2018 alongwith additional demand of Rs 4,50,333/- without obtaining an occupation certificate. The occupation certificate was rather granted 5 days thereafter on 20.06.2018. So, the offer of possession can be deemed valid only with effect from 20.06.2018. Accordingly, complainant deserves to be awarded delay interest from the deemed date of possession i.e. 02.08.2012 till the date of receipt of occupation certificate i.e. 20.06.2018.

(iii) Disputed demands

Now, issue of disputed demands remains to adjudicate upon. Ld. counsel for complainant has raised objection to the demand of Rs 30,000/- charged on account of club membership charges and Rs 63,196/- charged on account of GST. It is observed that issue of club membership charges and GST tax has already been decided in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018. Accordingly, respondent is directed to issue a revised demand letter to the complainant in consonance with the principles of Madhu Sareen's case within 45 days of uploading of this order. Ld. counsel for respondent argued that out of the total demand of Rs 4,50,333/- the complainant is only disputing above mentioned two charges however he is duty bound to pay the remaining demand of Rs 3,57,137/- which he has deliberately not paid till date without



any reasonable justification. He averred that in terms of Section 19(6) and 19(7) of RERA Act,2016 the allottee is duty bound to pay the amount to the respondent which in this case complainant has failed to do. So, in terms of aforesaid section and Section 2 (za) respondent is entitled to claim holding charges in terms of Rule 15 of HRERA Rules, 2017.

In this regard, Authority is of view that complainant is not justified in not paying undisputed amount of Rs 3,57,137/-. Obligation to deliver possession within stipulated time is cast upon respondent and so is the case with complainant in making payment of justified charges. For default the respective parties become liable to pay interest in terms of provisions of RERA Act,2016. Therefore, it is decided that complainant will pay interest on the amount of Rs 3,57,137/- from the date when it was demanded (15.06.2018) till date of this order (28.09.2021.) Such interest after calculation in terms of Rule 15 of HERERA Rules, 2017 (9.30%) works out to Rs 1,09,287/- .Accordingly, a sum of Rs 1,09,287/- shall be paid by the complainant to the respondent.

(iv) Delay interest

In furtherance of aforementioned observations, the complainant is entitled to get delay interest for the period ranging from deemed date of possession (02.08.2012) to date of occupation certificate (20.06.2018) in terms of Rule





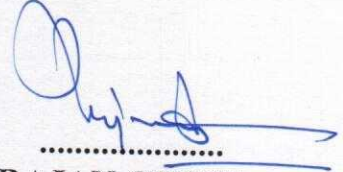
15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%). Accordingly, delay interest after calculation works out to Rs 8,91,424/-. This amount is payable by respondent to the complainant.

5. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 18,82,149/- .Said total amount has been worked out after deducting charges of taxes paid by complainant on account of VAT amounting to Rs 19,912/- and Rs 2,50,381/- paid on account of EDC/IDC from total paid amount of Rs 21,52,442/-. 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, interest thereon becomes payable to the department concerned and 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.

6. Respondent is directed to issue revised statement of accounts in view of aforesaid observation duly incorporating therein delay interest of Rs 8,91,424/- payable to complainant and Rs 1,09,287/- payable by complainant to the respondent within 45 days of uploading of this order. The complainant is directed to take possession of unit after paying

remaining amount if any within 30 days of receipt of revised statement of accounts.

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



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]



DILBAG SINGH SIHAG  
[MEMBER]