



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1446 OF 2018

Indu Jain wife of Shri Ashok Kumar

....COMPLAINANTS(S)

VERSUS

BPTP Ltd and others

....RESPONDENT(S)

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

**Member
Member**

Date of Hearing: 18.08.2021

Hearing: 18th

Present: Shri Abhay Jain, Counsel for the Complainant.
Shri Hemant Saini and Shri Himanshu Monga, Counsel for the
Respondent.

ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. Authority had already decided some of the demand impugned in this case vide its order dated 16.12.2020 and the relevant part thereof reads as under:

i) Basic sales price- As per the agreement and the statement of accounts dated 15.09.2015 the basic sales price of the plot is Rs. 15,17,500/-. This amount is payable by the complainant to the respondent.

(ii) External development charges- The external development charges are mentioned as Rs. 2,56,000/- in the statement of accounts. These charges are payable by the complainant as per clause 2.2 of the plot buyer agreement.

(iii) Infrastructure development charges- IDC amounting to Rs. 1,11,250/- have been charged by the respondent. These charges are also payable as per clause 2.4 of the plot buyer agreement.

(iv) Enhanced external development charges- No such charges have been demanded by the respondent because amount mentioned against this column is indicated as nil.

(v) Club Membership charges- An amount of Rs. 75,000/- has been demanded against CMC. The said amount is payable as per schedule I attached to the plot buyer agreement entered between the parties.

(vi) Cheque bouncing charges- No amount is mentioned under the said head.



(vii) Interest- An amount of Rs. 6,05,800/- has been charged for interest. As per note 8 to the statement of accounts annexed at page 72, the delay interest is charged at the rate of 18 % p.a., which, in the opinion of Authority, is quite unreasonable, unfair and unjust.

Significantly, the respondent for his own default has prescribed much lower rate of interest payable to the complainant in case he commits default towards timely delivery of possession. Disparity in the rate of interest is unsustainable in the eyes of law and therefore the Authority decides that the respondent shall only charge a reasonable rate of interest which in the opinion of the Authority shall be 9 % p.a. on the amount of instalments which were not paid on time by the complainant. Thus calculated, the amount of interest payable by the complainant works out to be Rs. 3,02,900/-.

(viii) Utility connection charges- While executing the buyer agreement, the parties had referred to a schedule which is part of the said agreement and therein, the various amounts payable by complainant have been distinctly reflected. Said schedule also bears signatures of complainant. An amount of Rs. 15000/- is shown payable by the complainant in the said schedule towards utility connection charges.

So, the complainant now cannot be allowed to escape the liability of paying Rs. 15000/- as utility connection charges.

Apart from the amounts which have been discussed in the preceding paragraph the respondent has also raised demands of Rs. 93,125/- and Rs. 2,23,750/- as payable by the complainant on account of preferential location charges and electrification and STP charges.

Parties have sought adjournment to address arguments in respect of these charges and they are allowed to address the Authority in this regard on the next date of hearing.

Now coming to the question as to what amount is payable to the complainant on account of delay in delivery of possession. The buyer's agreement contains clause 22.1 which reads as under:

“That the possession for the said plot as proposed to be delivered by the seller/confirming party to the purchaser(s) within about 24 months from sanctioning of the service plans of the entire colony, simultaneous to the execution of sale deed subject to however to force majeure and the purchaser(s) making all payments within the stipulated period and complying with the terms and conditions of this agreement.”

Relying on the aforesaid clause, the respondent's counsel has argued that the deemed date of possession shall start after lapse of 24 months of sanctioning the service plans.

5. *The Authority is prima facie of the view that once a promoter had opted to launch its project without obtaining all the requisite approvals from the concerned departments, he cannot be subsequently allowed to defer his obligation for completion of project and delivery of possession to the allottees. He has to rather ensure that the project is completed and possession is delivered to the allottees within a reasonable time after collecting money from the allottees. Such period shall reasonably not exceed 3 years from the date of receiving booking amount and execution of the buyer's agreement. So, the deemed date of possession in present case has to be considered 3 years from the date of execution of agreement. Since the agreement in the present case was executed on 24.07.2008, the deemed date shall be considered as 24.07.2011.*

The complainant has filed his affidavit averring therein that he has paid various instalments to the respondent amounting to a total sum of Rs. 18,08,875/- on the dates indicated in the table reproduced below:

Sr. No.	Date	Amount
1.	27.08.2005	Rs. 4,00,000/-
2.	01.09.2006	Rs. 1,86,250/-

3.	15.11.2006	Rs. 1,19,625/-
4.	11.07.2008	Rs. 4,00,000/-
5.	05.01.2011	Rs. 5,00,000/-
6.	17.06.2011	Rs. 2,03,000/-
	Total payment	Rs. 18,08,875/-

The delay interest is calculated from the deemed date of possession i.e., 24.07.2011 till grant of part completion certificate i.e., 24.01.2018 to the respondent. An amount of Rs. 10,94,617/- is worked out for said period. Both the parties may argue about the correctness of calculation of the interest on the next date.

2. Issues which were kept pending on 16.12.2020 and now need adjudication are regarding demands of Rs. 93,125/- and Rs. 2,23,750/- payable by the complainant on account of preferential location charges (PLC) and electrification and STP charges.

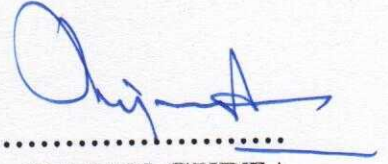
3. Learned counsels for the parties have been today heard on the above-mentioned pending issues. The Authority on perusing the Builder Buyer Agreement (BBA) entered between the parties finds that Clause-2 thereof casts a liability on the allottee to pay all charges as mentioned in sub clauses 2.1 to

2.6 Part (b) & (c) of sub clause 2.5 relates to the electrification charges and STP charges respectively. It is evident from these clauses that allottee's liability for electrification and STP charges is required to be calculated on pro-rata basis by adding the cost incurred on purchase and installing transformers and STP/Pollution Control devices. If so, the complainant cannot escape her liability for paying the electrification and STP charges to the respondent.

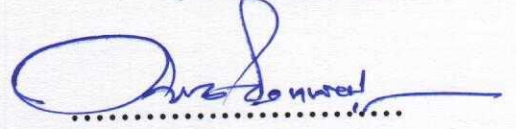
4. Learned counsel for the respondent has argued that the complainant is liable to pay PLC because his plot abuts on 12 Mtrs wide road. Learned counsel for the complainant is not in a position to deny or accept as to whether or not the plot allotted to the complainant abuts on the 12 Mtrs wide road in the project. So, the Authority observe that the complainant shall visit the office of respondent on any working day so that the respondent shows her the approved layout plan of the project. In case the plot allotted to the complainant abuts on the 12 Mtrs road or is park facing or is a corner plot, then the complainant will be liable to pay PLC and in case, the plot in question is neither on the 12 Mtr. wide public road nor park facing and nor even a corner plot, the respondent is then not entitled for charging the PLC from the complainant.




Disposed of in above terms. File be consigned to record room after uploading order on the website of the Authority.



RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
(MEMBER)



DILBAG SINGH SIHAG
(MEMBER)

