



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 665 of 2019

Vineet Bala

....COMPLAINANT(S)

VERSUS

BPTP Pvt. Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 28.07.2021

Hearing: 15TH

Present: - Mr. H.K Kathuria, Counsel for the complainant
Mr. Hemant Saini & Mr. Himanshu Monga Counsel for the
respondent

ORDER (ANIL KUMAR PANWAR-MEMBER)

Complainant booked a flat on 26.05.2009 in respondent's project- 'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 18.05.2010 entered between the parties, the respondent was under an obligation to deliver him possession latest by 18.11.2012. Complainant has already paid Rs 31,97,823/- against basic sale price of Rs 22,37,003/-. Possession of the unit was offered to complainant on 16.08.2018 alongwith further demands raised under various heads for a total amount of Rs

5,02,505/-. The charges raised for cost escalation, GST, VAT, electrification and ST charges, club charges , EEDC and increase in area from 1203 sq ft to 1318 sq ft in the demand served with offer of possession have been impugned in the complaint. The complainant did not accept the offer because (i) he was asked to pay unjustified demands, (ii) interest payable to him on account of delay in handing over of possession was not accounted for and (iii) the offer was silent about status of occupation certificate. Feeling aggrieved present complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit alongwith delay interest.

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 31,97,823/- towards total sale consideration of Rs 23.76 lakhs. The project in question is complete and unit is ready for possession but the complainant himself has refused to accept the offer of possession, he is not entitled for delay interest.

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

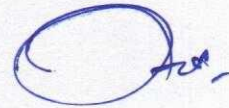
(i) Maintainability of complaint



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 Authority don't find merit in respondent's objection regarding maintainability of the present complaint.

(ii) Offer of possession

Undisputedly, respondent has issued offer of possession dated 16.08.2018 to the complainants alongwith demand for payment of additional Rs 5,02,505/-. However, said offer was not accompanied with occupation certificate issued by competent authority. Today, learned counsel for respondent has apprised the Authority that developer had applied for grant of Occupation Certificate on 17.02.2020 but the same has not been received till date. In these circumstances, the impugned offer of possession cannot be called a valid offer of possession in eyes of law and complainant was not bound to accept the same. Therefore, the offer of possession dated 16.08.2018 stands quashed. Now, the respondent will offer a fresh offer of possession to the complainant after receiving occupation



certificate from the concerned department. As a logical consequence, the additional demands made alongwith invalid offer of possession also stands quashed.

The respondent at the time of offering possession will also send a statement of account containing details of outstanding dues payable by complainant. For the purpose of preparing such statement, the demands in respect of which guidelines have been laid down by this Authority in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018 shall be strictly followed. The complainant shall be under an obligation to accept the offer of possession made after obtaining occupation certificate and shall also be liable to pay all the demands raised in the accompanying statement of accounts within 30 days of receipt of statement of account and offer of possession. He will not be entitled to escape his liability in paying accompanied demands merely on the plea that some of those demands are unjustified. So, he will be at liberty to expeditiously take legal recourse for challenging unjustified demands if any ^{and} to obtain stay order against payment of impugned demands. ^{Except} for the eventuality when he has obtained a specific restraint order qua some demand, ^{the} complainant will be liable to meet the demands within 30 days of the receipt of offer of possession and statement of account failing which the respondent will be at liberty to initiate proceedings for cancellation of his allotment.



(iii) Delay interest

Learned counsel for the respondent has urged for awarding delay interest at the rate mentioned in BBA for the period prior to coming into force of RERA Act, 2016. Said argument is not acceptable for the reasons already spelt out in majority judgement of the Authority rendered in another case of the respondent bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018. The dictum of said judgement, per view expressed by majority members, is that in a case where exists a disparity in the BBA about rate of interest chargeable from the builder and the allottee for defaults in discharge of their respective obligations towards each other, the the builder as well as the allottee are then liable to pay interest as per Rule 15 of HRERA Rules, 2017 for default in discharge of their respective obligations for the period prior to coming into force of RERA Act, 2016 and also for the period after coming into force of RERA Act, 2016. Adopting the said principle of Madhu Sareen's case, the Authority holds the complainants are entitled for payment of delay interest at the rate prescribed in Rule 15 of RERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to 9.30% (7.30%+2.00%).

As per complaint petition, total amount paid by complainant is Rs 31,97,823/-. However, complainant has only attached receipt of Rs 28,76,528/-. For purpose of calculating delay interest total paid amount is thus being taken as Rs 28,76,528/-. Said amount includes even the amount of Rs 1,64,178/- for

EDC/IDC, Rs 27,525/- for VAT and Rs 85,653/- for EEDC. The total amount of Rs. 2,77,356 /- (164178+27525+85653) collected under these heads was payable to the government departments and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest only to the departments entitled to receive the amounts. How can the complainant in such situation legitimately claim delay interest on the amount of Rs. 2,77,356/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 2,77,356 /- is payable to the complainant. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs.25,99,172 /- (2876528-277356).

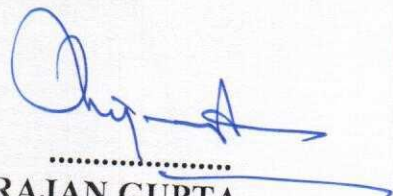
The respondent has not delivered possession on 18.11.2012 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 25,99,172/- was calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 18.11.2012 (deemed date of possession) to 28.07.2021 (date of order). Such interest works out to Rs 20,07,158/- from 18.11.2012 to 28.07.2021 and Rs 20,144/- for each month thereafter till delivery of possession after obtaining receiving occupation certificate and the same is held payable to the complainant by the respondent w.e.f 01.09.2021.

5. Respondent is accordingly directed to pay the amount of upfront delay interest of Rs 20,07,158/- within 45 days of uploading of this order on the website



of the Authority. The respondent's liability for paying monthly interest of Rs 20,144/- will commence w.e.f. 1st September, 2021 and it shall be paid on monthly basis till possession is delivered after obtaining occupation certificate.

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



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]

