



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 3067 OF 2019

Sudesh Rani Wadhwa

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 28.07.2021

Hearing: 7th

Present: Shri Nitish Banka, Counsel for the Complainant through video-conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Counsel for the Respondent.

ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. Sans of un-necessary details, the present complaint is filed by Sudesh Rani Wadhwa who was allotted Flat No. 166 on First Floor in respondent's project named 'Park Lands Pride' situated in Sector-77, Faridabad. Builder Buyer Agreement (BBA) was entered between the parties on

24.05.2012 and in terms of the said agreement, respondent was obliged to deliver possession to the complainant latest by 23.05.2015. Complainant had already paid an amount of Rs. 40,29,801/- against the sale price of Rs. 34,35,002. Possession was offered to the complainant on 27.09.2019 but the complainant did not accept the offer because the correct amount of interest payable to him for the delay in offering possession was not accounted for in the demands raised in a statement sent with the offer of possession. So, the complainant's prayer now is that for delivery of possession of the booked flat on payment of outstanding dues after adjusting correct amount of delay interest.

2. The respondent has contested the complaint raising an objection regarding its maintainability because the dispute between the parties, in term of BBA, is referable to an arbitrator. Another preliminary objection raised is that the complainant has only paid a sum of Rs. 39,13,583 while a sum of Rs. 16,07,240.81/- is outstanding against her. The plea raised on merit is that project has already received occupation certificate on 20.01.2020 and since the complainant herself has refused to accept the offer of possession, she is not entitled for delay interest.

3. Learned counsels for the parties have been heard and record has been perused.



4. 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.

5. The offer of possession was given to the complainant at the time when the project had not received the occupation certificate, so neither the offer was valid nor even the complainant was obliged to accept the same. That being so, mere fact that the complainant did not accept the offer will not disentitle her for interest which she is otherwise entitled to seek on the already paid amount on account of delay in offering the possession.

6. The possession as per BBA was required to be delivered latest by 23.05.2015 and since the respondent could not offer possession by that date, the complainant is entitled for delay interest from 23.05.2015 to the date on which the project had received the occupation certificate i.e., on 20.01.2020



7. 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 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.

8. Adopting the aforesaid principle of Madhu Sareen's case, the Authority will get the delay interest payable to the complainant calculated at the rate prescribed in Rule 15 of RERA Rules,2017 i.e. SBI MCLR+2% (9.30%).

9. The complainant per receipts produced on record has already paid a total amount of Rs. 40,29,801/- to the respondent. Said amount includes Rs. 1,48,932.6/- paid for development charges, Rs. 1,06,141.08/- paid for Enhanced EDC, Rs. 38,376/- paid for VAT and timely discount amounting to Rs. 88,440/-

. The total amount of Rs. 2,93,449.68/- (1,48,932.6+1,06,141.08+ 38,376) 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. 2,93,449.68 collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 2,93,449.68/- is payable to the complainant. Delay interest is not payable on timely payment discount as well. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs. 36,47,911.32 (40,29,798 - 2,93,449.68- 88,440).

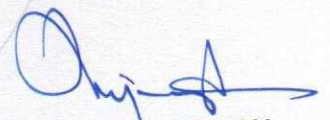
10. The respondent has not delivered possession on 23.05.2015 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 36,47,911.32 was calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (23.05.2015) till date of receipt of occupation certificate (20.01.2020). Such interest works out to Rs 15,82,267/- and it is held payable by the respondent to the complainant.

11. It is noteworthy that the offer sent to the complainant was accompanied by a demand amounting to Rs. 16,07,240.81. Said demand was

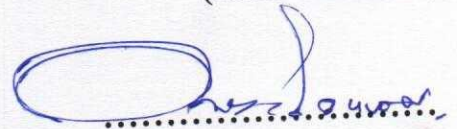
raised under various heads such as Club membership charges, Electrification and STP Charges, VAT, Service Tax, GST etc. The Authority in the Madhu Sareen case has laid down guidelines for calculations of amount pertaining to these demands and some other demands as well. So, the Authority will direct the respondent that he shall calculate those demands as per the guidelines mentioned in the Madhu Sareen case and thereafter send a fresh offer of possession accompanied with demands which shall be in consonance with the principles of Madhu Sareen's case and should also adjust therein the delay interest as per Rule-15 of the HRERA Rules.

12. Respondent is directed to pay the amount of delay interest of Rs 15,82,267/- within 45 days of uploading of this order on the website of the Authority.

13. Case is **disposed of** in view of above terms. Order be uploaded on the website of the Authority and file be consigned to the record room.



RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
(MEMBER)