



Complaint no. 70 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 70 of 2021

Ravinder Kumar Wadhwa and Monica WadhwaCOMPLAINANT(S)
VERSUS

M/s BPTP Pvt LtdRESPONDENT(S)

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

**Chairman
Member
Member**

Date of Hearing: 29.09.2021

Hearing-3rd

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

ORDER (ANIL KUMAR PANWAR-MEMBER)

The complainant booked a flat on 25.05.2009 in respondent's project- 'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 27.01.2012 entered between the parties, the respondent was under an obligation to deliver him possession latest by 27.07.2014. Complainant has already paid Rs 19,36,505/- against basic sale price of Rs 19,69,329/-. Since the respondent has failed to deliver possession, the complainant has filed the present

complaint for delivery of possession and award of interest on the already paid amount.

2. The respondent in his pleadings has not disputed that flat bearing no. PE-94-FF having area 1025 sq ft was allotted to complainant vide allotment letter dated 06.10.2011 in his above mentioned project and the BBA was entered between the parties on 27.01.2012. His plea regarding delivery of possession is that 70% of the project has been completed and construction is going in full swing. There is no mention in the pleadings as to when the construction will complete and when the respondent will be able to apply for grant of occupation certificate.

3. Learned counsel 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 respondent per clause 5.1 of BBA was under an obligation to offer possession latest by 27.07.2014. More than 7 years thereafter have already lapsed and the project is still not complete. So, the respondent as per provisions of Section 18 of RERA Act,2016 is now liable to pay interest to the complainant for each month of delay from the deemed date of possession till the date on which a valid offer after obtaining occupation certificate is made for delivery of possession. 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%).

6. The complainant per receipts has paid total amount of Rs 19,36,505/- which includes even the amount of Rs 2,50,381/- for EDC/IDC and Rs 19,699/- for VAT.The total amount of Rs. 2,70,080/- (250381+19699) 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. 2,70,080/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 2,70,080/- 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.16,66,425 /- (1936505-270080).

7. The respondent has not delivered possession on 27.07.2014 which was the deemed date of possession per builder buyer agreement. 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

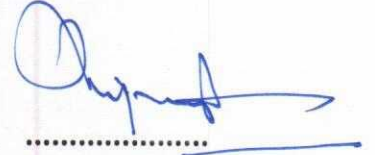
under an obligation to accept the offer of possession made after obtaining occupation certificate and shall also be liable to pay all the demands raised in the accompanying statement of accounts within 30 days of receipt of statement of account and offer of possession. He will not be entitled to escape 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 or 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.

8. The Authority got the delay interest calculated from its Account branch on Rs 16,66,425/- 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 (27.07.2014) till date of order (29.09.2021) in terms of Rule 15 of HRERA Rules, 2017 .e. SBI MCLR+2% (9.30%). Such interest works out to Rs 11,12,442/- and it is held payable by the respondent to the complainant. For further delay occurring after the date of this order, the respondent is liable to pay monthly interest of Rs 12,915/- to complainant commencing from 29.10.2021.

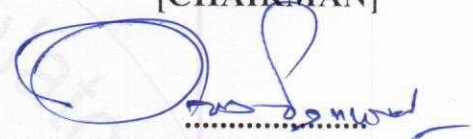


9. Respondent is directed to pay the amount of upfront delay interest of Rs 11,12,442/- within 45 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest of Rs 12,915/- will commence w.e.f. 29.10.2021.

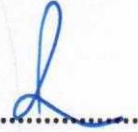
10. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]