



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 664 OF 2019

Jitender Kumar

....COMPLAINANT(S)

VERSUS

BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Anil Kumar Panwar**

**Chairman  
Member**

**Date of Hearing:** 04.08.2021

**Hearing-13<sup>th</sup>**

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

### **ORDER (ANIL KUMAR PANWAR-MEMBER)**

Complainant herein is seeking possession of unit no. H-3-16-SF having area 1022 sq ft situated in respondent's project namely Park Elite Floors, Faridabad. Builder buyer agreement was executed between the parties on 28.09.2010 and in terms of clause 4.1 of said agreement, possession was supposed to be delivered latest by 28.03.2013. Complainant has already paid Rs 23,21,561/- against basic sale price of Rs 19,94,399/-. Possession of the unit was offered to

the complainant on 16.09.2019 alongwith further demand of Rs 7,96,149/-. Said offer was not even supported with occupation certificate. The charges raised for cost escalation, increase in area from 1022 sq ft to 1158 sq ft, EEDC, Electrification and STP charges, club membership charges, GST, VAT, service tax and interest on delayed payments have been impugned in the complaint. The complainant did not accept the offer due to unjustified demands, non-adjustment of interest payable to complainant on account of delay in handing over of possession and for want 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 23,21,561/- against basic sale price of Rs 19,94,399/- for the reason that said amount is inclusive of timely payment discount amounting to Rs 32,630/- being given by respondent to him. The project has already received the occupation certificate on 02.09.2019 and since the complainant himself has refused to accept the offer of possession, he is not entitled for delay interest.

3. Learned counsel for the parties have been heard and documents have been perused.



4. At the outset, the objection raised against maintainability of complaint deserves to be adjudicated. The maintainability of present complaint was questioned on the ground that there is a clause in the BBA for referring the dispute to Arbitrator and the Authority thus cannot decide the present 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 plea of the respondent on the point that the matter needs to be referred to the arbitrator is rejected.

5. The complainant was sent offer of possession on 16.09.2019. The respondent prior to sending of said offer had already obtained occupation certificate on 02.09.2019. So, the offer of possession was a valid offer and the delay interest to the complainant will be payable for the period ranging from deemed date of possession (28.03.2013) to date of offer of possession (16.09.2019).

6. 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 reason already spelled out in its majority judgement 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 Authority in the said judgement has ruled that an allottee in a case where there is disparity in rate of interest chargeable by builder from the allottee for their respective defaults in regard to their obligation towards each other. Then the builder and allottee both are liable to observe parity in the rate of interest and as such, the allottee in such case will be entitled to the rate of interest as per Rule 15 of HRERA Rules,2017 for the period prior to coming into force of RERA Act,2016 and for the period after coming into force of RERA Act,2016. Adopting same principle of Madhu Sareen's case, the Authority got delay interest calculated in terms of Rule 15 of RERA Rules,2017 i.e. SBI MCLR+2% (9.30%).

7. Total paid amount alleged by the complainant in the complaint petition is Rs 26,96,898/- and in latest statement of delay interest filed by complainant total paid amount is depicted as Rs 23,21,175/-, but as per statement of account issued alongwith offer of possession dated 16.09.2019 total paid amount is Rs 23,21,561/-. A difficulty however is being faced by the Authority is that parties have provided receipt of Rs 22,52,550/- only. Total paid amount is taken as Rs 23,21,561/- as same is admitted in offer of possession. Said total amount includes even the amount of Rs 99,003/- for EEDC and Rs 2,37,273/- for EDC/IDC. The amount of EDC/IDC and EEDC is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory

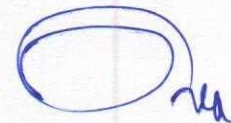
obligations. If a builder does not pass on this amount to the concerned department, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder will be therefore not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of Rs 19,85,285/- (Rs23,21,561– Rs 99,003– Rs 2,37,273).

8. The respondent has not delivered possession on 28.03.2013 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 19,85,285/- 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 (28.03.2013) till date of offer of possession (16.09.2019). Such interest works out to Rs 11,95,299/- and it is held payable by the respondent to the complainant.

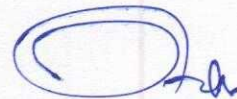
9. Now comes the turn of adjudicating upon the demands which the complainant has impugned in this case. Challenge in the first place is made in respect of amount of Rs 4,51,045/- charged for increase in area of flat from 1022 sq ft to 1158 sq ft. The complainant has already paid said amount on 29.08.2011. So, a pertinent question was put to complainant's counsel as to how the demand already paid ten years back can now be agitated particularly when clause 1.15 of BBA permits the respondent for increase in area to the to the extent of 15% on either side. Learned counsel for the complainant then frankly stated that she does

not wish to press the challenge made to the charging of amount for increase in area. So, the Authority will hold that the amount had been rightly charged from the complainant.

10. The respondent had raised demands vide statement of account dated 16.09.2019 attached as Annexure R-17. When asked to pin point from said statement the precise demands which per complainant are not justified, the learned counsel for the complainant has clarified that his client is agitating the demand of Rs 99,003 for EEDC, Rs 62,679/- for cost escalation, Rs 75,477/- for electrification and STP charges, Rs 37,479/- for interest on delayed payments, Rs 50,000/- for club membership charges, Rs 38,630/- for service Tax, Rs 23,706/- for VAT and Rs 80,438/- for GST. The Authority in a case decided on 16.07.2018 bearing complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd has laid down principles for determining the allottee's liability in respect of demands of EEDC, cost escalation, electrification and STP, club membership, service tax, VAT and GST. So, the respondent is directed to calculate the demands in respect of all these components as per principles laid down in Madhu Sareen's case and to serve a revised demand letter upon complainant within 45 days of uploading of this order. The complainant in case is still not satisfied with the revised demands will be at liberty to challenge the same before this Authority by filing a fresh complaint within a month from the date the revised statement is served upon him.

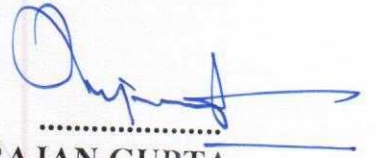


11. Learned counsel for the complainant has lastly argued with regard to amount of Rs 37,479/- charged from the complainant as interest on account of delay in payment of installments. The respondent has placed on record documents revealing that two cheques given by the complainant for paying the amount of due instalments, had bounced in the year 2011. So, the complainant was liable to pay interest on the amount of these cheques from the date when the instalments were payable till the payment of amounts of cheque were made to respondent. The Authority finds that respondent had calculated interest on the defaulted amount @18% p.a. The respondent's plea is that he was entitled to charge said rate of interest in terms of BBA. What is significant to notice from the BBA is that there is no parity between the rate of interest payable to complainant for respondent's default in offering timely possession and the rate of interest payable by complainant to the promoter for delay in payment of timely installments. Such disparity in the rate of interest was unreasonable, arbitrary and unfair. Neither there exists any justification for such disparity nor the same is permissible as per the spirit of provisions of Section 2 (za) of RERA Act, 2016. So, the Authority is directing the respondent to recalculate the interest on the amounts of bounced cheque at the rate prescribed in Rule 15 of HRERA Rules i.e. SBI MCLR+2% which as on today works out to 9.30%. Said amount of interest shall be duly reflected in the revised statement of account to be served upon the complainant within 45 days of uploading of this order.



12. Respondent in view of above discussion is directed to adjust an amount of Rs 11,95,299/- as delay interest in the revised statement of account within 45 days of uploading of this order. Complainant is also directed to take possession of the unit after paying remaining balance amount as shown in the revised demand letter, within 45 days of the receipt of said statement.

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



RAJAN GUPTA  
[CHAIRMAN]



ANIL KUMAR PANWAR  
[MEMBER]

