



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1358 OF 2019

Maj Rakesh Singh

....COMPLAINANT(S)

VERSUS

M/s B.P.T.P Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 29.07.2021

Hearing-11th

Present : - Mr. Nitin Kant Setia, Counsel for the complainant (through VC)
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for
respondent

ORDER (ANIL KUMAR PANWAR-MEMBER)

An original allottee had booked a flat in respondent's project-Park Elite Premium in year 2009. An allotment letter for unit no. K-702 having area of 1128 sq ft was issued to him on 12.01.2010. Builder buyer agreement (BBA) was executed between the original allottee and respondent on 10.01.2011 and in terms of clause 3.1 of it, possession was supposed to be delivered latest by 10.07.2014. Original allottee had sold his allotment rights to Lokesh and present complainant, Rakesh Singh, had later purchased allotment rights from Lokesh on 09.08.2017. It has been alleged by the complainant that respondent has not offered possession

of booked unit till date despite receiving Rs 29,67,547/- against basic sale price of Rs 22,80,997/-. Feeling aggrieved, present complaint has been filed seeking 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 26,67,547/- towards total sale consideration of Rs 22.80 lakhs. The complaint is pre-mature as the project in question is a registered project bearing no. 191 of 2020 wherein declared date for completion is 31.12.2022. Further, Ld. counsel for respondent argued that subsequent allottee is not entitled to any delay interest because he has already signed an undertaking dated 28.08.2017 to not to hold liable respondent for any delay in project, in support, he has also cited para 38 of judgement dated 24.08.2020 of Hon'ble Supreme Court in Civil Appeal number 6239 of 2019 titled 'Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited'.

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

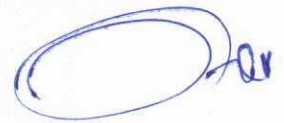
promoters. Section 79 of the RERA Act, 2016 vests exclusive jurisdiction in the Authority to adjudicate the matters concerning discharge of respective obligations between the allottees and the promoters. Mere clause in BBA for referring the dispute to the Arbitrator thus cannot be allowed to defeat the 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. Learned counsel for respondent on the strength of an undertaking dated 28.08.2017 signed by complainant which is available on record as Annexure R-14 and whereby the complainant has agreed not to hold the respondent liable for delay occurring on account of change in building plan or modification on area etc., has argued that complainant is not entitled to interest on account of delay in delivery of possession. The Authority regrets its inability to accept the contention for reason narrated hereinafter. Firstly, it deserves to be noticed that the BBA entered with original allottee provided for award of interest to the allottee on account of delay in delivery of possession. Per section 2 (d) of RERA Act,2016 successor of original allottee for all intent and purposes is to be considered as allottee and therefore, the right conferred by BBA on the original allottee with regard to payment of delay interest was available to the present complainant being successor-in-interest. If so, the respondent can be allowed to use the undertaking

dated 28.08.2017 against the complainant only if it is proved that said undertaking was executed for a valid consideration. Neither any consideration for waiving off the right to claim delay interest by the complainant is spelt out in the undertaking Annexure R-17 nor any explanation thereto could be furnished during the course of arguments. So, the undertaking is obviously unconscionable and unreasonable and its benefit cannot be allowed to the respondent.

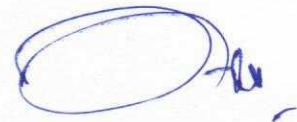
6. That apart, the respondent in this case was under an obligation to deliver possession by 10.07.2014 and he has failed to discharge his obligation in this regard till date. After coming into force of RERA Act,2016, the respondent per section 18 of the Act is liable to pay delay interest to the allottee for each month's delay. Said section thus confers a statutory right on an allottee for receiving delay interest and such statutory right of the complainant even otherwise cannot be allowed to be defeated by undertaking relied upon by the respondent. So, the Authority will hold the complainant entitled to delay interest from deemed date of possession till a valid offer of possession is made after receiving occupation certificate.

7. Faced in the aforesaid situation, learned counsel for respondent has sought to escape the liability of paying delay interest on the strength of a judgement dated 24.08.2020 of Hon'ble Supreme Court passed in Civil Appeal number 6239 of 2019 titled 'Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited'. The Authority



on perusal of said judgment finds that the same relates to a case filed before National Consumer Redressal Commission. Fate of said case was decided on the basis of provisions of Consumer Protection Act,1986. The case herein on the contrary has to be decided on the basis of provisions of RERA Act,2016. As earlier observed, successor of allotment rights is so good an allottee as the original allottee per provisions of Section 2 (d) of RERA Act,2016. The BBA executed with the original allottee clearly vests a right in the allottee for award of interest on account of delay in delivery of possession. Such right stood vested in the present complainant by virtue of his being the successor of original allottee. So, the respondent on the strength of a case decided under provisions of Consumer Protection Act,1986 cannot escape his liability to pay delay interest to the present complainant.

8. The respondent per clause 5.1 of BBA was under an obligation to offer possession latest by 10.07.2014. 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%)

9. The complainant per receipts had paid total amount of Rs 29,67,547/- Which includes even the amount of Rs 28,082/- for VAT and Rs 1,70,768/- for EDC/IDC and Rs 3,37,767/- for EEDC. The total amount of Rs. 5,36,617/- (28082+170768+337767) 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. 5,36,617/-

collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 5,36,617/- 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. 24,30,930/- (2967547-536617).

10. The respondent has not delivered possession on 10.07.2014 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

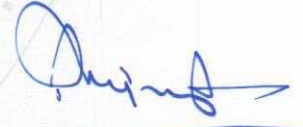


account failing which the respondent will be at liberty to initiate proceedings for cancellation of his allotment.

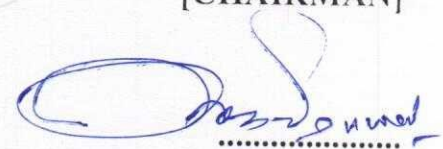
11. The Authority got delay interest from its Account branch on amount of Rs 24,30,930/- in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 10.07.2014 (deemed date of possession) to 29.07.2021 (date of order). Such interest works out to Rs 12,78,327/- and it 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 18,840/- to complainant commencing from 29.08.2021.

12. Respondent is directed to pay the amount of upfront delay interest of Rs 12,78,327/- within 45 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest of Rs 18,840/- will commence w.e.f. 29.08.2021.

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



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]