



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 39 of 2021

Praveen Rai

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 22.09.2021

Hearing: 3rd

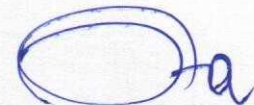
Present: - Mr. Rahul Rathore, Counsel for the complainant through VC
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the
respondent.

ORDER (ANIL KUMAR PANWAR-MEMBER)

The complainant booked a flat on 05.06.2009 in respondent's project- 'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 29.02.2012 entered between the parties, the respondent was under an obligations to deliver him possession latest by 29.09.2014. Complainant has already paid Rs 28,78,462/- against basic sale price of Rs 26,44,399/-. 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-80-FF having area 1371 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 29.02.2012. 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. After hearing the parties and going through the record, the Authority finds that the respondent per clause 5.1 of BBA was under an obligation to offer possession latest by 29.09.2014. 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 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 from builder to 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%).

4. The complainant per receipts has paid total amount of Rs 28,78,462/- which includes even the amount of Rs 3,18,468/- for EDC/IDC and Rs 23,351/- for VAT. The amount of EDC/IDC and VAT 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 25,36,643/- (Rs 28,78,462 – Rs 3,18,468 – Rs 23,351).

5. The respondent has not delivered possession on 29.09.2014 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.




6. The Authority got the delay interest calculated from its Account branch on Rs 25,36,643/- 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 (29.09.2014) till date of order (22.09.2021) in terms of Rule 15 of HRERA Rules, 2017 .e. SBI MCLR+2% (9.30%). Such interest works out to Rs 13,03,124/- 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 19,659/- to complainant commencing from 22.10.2021.

7. Respondent is directed to pay the amount of upfront delay interest of Rs 13,03,124 within 45 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest of Rs 19,659/- will commence w.e.f. 22.10.2021 .

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

I concur with above orders as well as additional findings given by Honble member Sh. Dilbag Singh.


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RAJAN GUPTA
[CHAIRMAN]


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ANIL KUMAR PANWAR
[MEMBER]

adding findings on two issues on following pages


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DILBAG SINGH SIHAG
[MEMBER]

I undersigned fully agreeing regarding the findings and conclusions drawn by the Hon'ble Sh. A.K. Panwar in his orders. However, I would also like to address following issues raised by the respondent in his written and verbal submissions during hearing.

1. Issue of maintainability of the complaint
2. Issue of force majeure

Aforesaid two issues are discussed below in detail.

(I) Issue of maintainability of the complaint

Respondent promoter has raised an issue of maintainability of the complaint in his written submissions. The very basic argument of the respondent is that first this matter should be referred to an Arbitrator, as the question in dispute is a mixed question of fact and law, therefore the same cannot be tried by this Authority as Authority does not have jurisdiction to entertain such complaint on the ground that the builder buyer agreement was executed i.e. on 29.02.2012 much prior to coming into force of RERA Act,2016. In this regard, I undersigned am of the considered view that this argument does not hold legal strength in view of the provision of Section 79, Section 80 and Section 89 of the RERA Act,2016 which empower the Authority to hear and adjudicate all disputes arising among the allottees and their respective promoters of a real estate project. Therefore, being subject matter of RERA Act,2016, all such disputes relating to subsisting obligations between the promoter and his allottee fall within purview of RERA Authority. Moreover, it is also pertinent to mention here that the jurisdiction of

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Civil Courts is specifically barred under Section 80 of RERA Act,2016 to entertain any such complaint in the matter. Authority has been honouring all the lawfully executed agreements provided these are fair and based on the principles of equity and natural justice. Therefore, all such disputes arising out of those agreements can be settled only by the Authority and jurisdiction of civil Court stands specifically barred by Section 79 and 80 of the Act. On this issue legal and logical reasoning to challenge the jurisdiction of the Authority cannot be sustained.

Apart from above, as far the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floors being constructed on the plots measuring 500 Sq. Mtrs. is concerned, it is observed that the respondent has been developing a larger colony covering several hundred acres of land. Some part of the project in the shape of floors construction on various size of plots with a given FAR (floor area ratio) permitted by the competent authority while approving its zoning plan. Over such plots, 3 to 4 flats are being constructed on each plot and the same are being sold to different individuals. Such practice is under permissible in view of provisions of Haryana Development and Regulation of Urban Areas Act,1975. The registrability and jurisdiction of this Authority has to be determined with reference to overall area of a larger colony being promoted by the developers. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that since the plot does not exceeds 500 Sq. Mtrs, therefore the jurisdiction of this Authority is

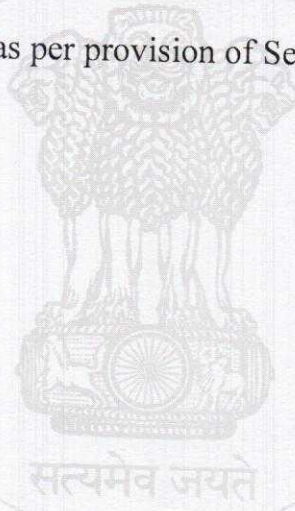
not correct from legal point of view. The provisions of Section 3(a) of RERA Act, 2016 are applicable, in case total area of the project is less than 500 Sq, Mtrs. So, the arguments of the respondents in this regard are hereby rejected. The relevant part of Section 3(2)(a) is reproduced for ready reference:-

“Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required- Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases”.

(II) Issue of force majeure

Further, Ld. counsel for respondent has also argued that time period during which lockdown was imposed in view of pandemic COVID-19 be exempted from said delay interest. So, is the case of respondent with regard to ban on construction activities by NGT or any State agencies in the NCR region. In this regard, I am again of considered view that respondent has delayed the project more than seven years as deemed date of possession was 29.09.2014. So, complainant who had already paid around ninety-five percent of basic sale price has been waiting since then for possession of his booked unit. More seriously, even as of now, respondent is not committing any timeline for completion of unit and handing over possession. So, in given situation, respondent cannot be allowed to take undue benefit of his own wrong deeds and mismanagement as he himself was at fault by not completing the project within timeframe upto 2014 i.e deemed date of possession as per clause 5.1 of builder buyer agreement dated 29.02.2012

decided by himself consciously. He cannot seek any excuse at this stage to exempt the lockdown period or any other period of ban on construction that was happened in subsequent year of 2019-2020 from awarding delay interest. Had it been the case where respondent was not able to complete the project solely because of restrictions imposed by way of lockdown or ban imposed by certain Authority before 2014 then the case would have been different. Here the respondent is not even able to justify the time period already lapsed on his part in completion of project even before happening of pandemic and ban on construction. For these reasons, argument of respondent cannot be accepted as these are not based on principle of force majeure as per provision of Section 6 of RERA Act,2016.



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DILBAG SINGH SIHAG
[MEMBER]