



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1991 OF 2019

Sonia

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Anil Kumar Panwar**

**Chairman
Member**

Date of Hearing: 28.07.2021

Hearing: 10th

Present: Shri Ketan Antil, Counsel for the Complainant through video-conferencing.

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

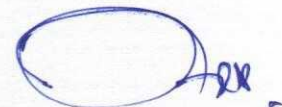
ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. Sans of un-necessary details, the present complaint is filed by Sonia who was allotted a villa bearing No. F-12-40 in respondent's project named Park Lands situated in Faridabad. Builder Buyer Agreement (BBA) was entered

between the parties on 02.04.2009 and respondent was obliged to deliver the possession latest by **02.04.2012**. An addendum to agreement dated 14.02.2014 was executed between the parties whereby villa no. was changed from F12-40 to P17-05. Complainant had already paid an amount of Rs. 19,99,526/- against the basic sale price of Rs. 23,62,500. Possession has not been offered to the complainant till date. So, the complainant's prayer now is for delivery of possession of the booked villa along with 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. It is stated that possession timelines were subject to force majeure and construction is going on in full swing and the respondent is making every endeavour to handover possession at the earliest. Further it is stated that delay penalty will be given as per the agreement. Clause 8.2 of villa buyer agreement specifies the amount of delay penalty as Rs. 24 per square meter per month. This amount was enhanced vide letter dated 10.07.2010 to Rs. 48 per sq. meter per month.

3. Learned counsel for the parties have been heard and record of the case has been perused.

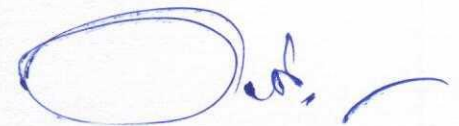


4. The parliament has enacted the Real Estate Regulatory Authority Act for expeditious disposal of the disputes arising between the allottees and the promoters. Section 79 of the RERA Act, 2016 vests exclusive jurisdiction in the Authority to adjudicate the matters concerning discharge of respective 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. It is admitted case of the parties that builder buyer's agreement (BBA) was executed on 02.04.2009. The respondent in terms of clause 8.1 of the BBA was obliged to deliver possession within three years from the date of sanctioning of the building plan simultaneous to the execution of sale/ conveyance deed subject to force majeure and purchaser making all payments within the stipulated period. There was however no mention in the BBA about the date on which the respondent might have filed an application for sanctioning of the building plan or about the time limit within which the respondent should file an application for sanctioning of building plan. As a consequence of such vagueness, the BBA vested an absolute right in the respondent to select a date at

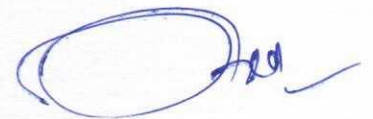
his sole discretion for initiating the process of getting the building plan sanctioned and he was, therefore, in a position to defer at his own will his liability towards delivery of possession just by delaying the filing of application for sanctioning of building plan. No prudent person other than the one whose discretion has been circumvented can be expected to agree with a covenant which puts him in a disadvantageous position vis a vis the person with whom he is entering into a contract. The respondent herein had already received Rs. 12,83,475/- from the complainant before the execution of BBA. So, there was no option available to the complainant other than signing the BBA in the format as drafted by the respondent. In these circumstances, the Authority instead of determining the deemed date of possession on the basis of above discussed clause 8.1 of the BBA would go by the usual market practice on the subject. Such market practice is that possession to the allottee should be offered within 42 months from the execution of BBA i.e., three years for completion of construction plus six months for obtaining occupation certificate etc. As per said formula, the deemed date of possession in this case works out to 01.10.2012. The complainant is therefore held entitled to delay interest from 01.10.2012 to the date on which lawful possession will be handed over to her after receiving the occupation certificate.

6. Admittedly, the respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation



certificate of the project in question. It is nowhere pleaded that the respondent has offered to the complainant some alternative unit similar to the booked one at any point of time. So, the Authority has no hesitation in concluding that the complainant is entitled for the delay interest from the deemed date i.e., 01.10.2012 to the date on which a valid offer is sent to her after obtaining occupation certificate.

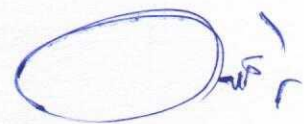
7. Learned counsel for the respondent has urged for awarding delay interest at the rate mentioned in BBA for the period prior to coming into force of RERA Act,2016. Said argument is not acceptable for the reasons already spelt out in majority judgement of the Authority rendered in another case of the respondent bearing Complaint 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 got 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%).

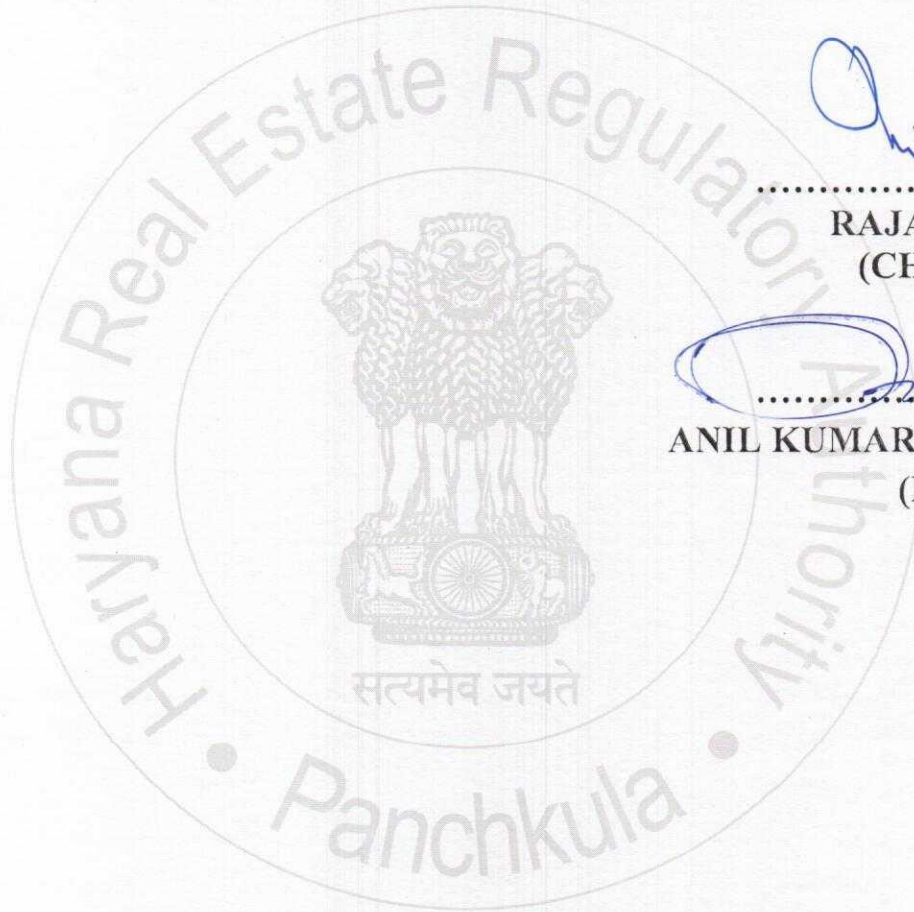
9. The complainant in her application dated 24.12.2020 had shown that she had already paid Rs. 19,99,526/-. Respondent has not filed any reply to the said application. The Authority thus accepted the figure of Rs. 19,99,526 as correct and got the calculated the delay interest on said amount from its accounts branch, which has been worked out to Rs. 13,60,579/-. The respondent is directed to adjust the said amount towards the outstanding dues recoverable from the complainant.

10. The Authority in Madhu Sareen's case has laid down guidelines for calculations of amount pertaining to various kinds of demands. So, the Authority will direct the respondent to calculate those demands as per guidelines laid in Madhu Sareen's case and thereafter send to the complainant a fresh offer of possession accompanied with a statement containing demands calculated per principles of Madhu Sareen's case and showing adjustment of delay interest as per Rule-15 of the HRERA Rules.



11. The Authority further orders that while upfront payment of Rs. 13,60,579/- as delay interest shall be made within 45 days of uploading of this order on the website of the Authority, the monthly interest of Rs. 15,496/- will commence w.e.f. 1st August, 2021, payable on 1st September 2021 onwards.

12. 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)