



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1512 OF 2020

Amit Srivastav

....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: 29.09.2021

Hearing: 5th

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)

An original allottee named Rajan Gupta had booked a unit on 06.06.2009 in respondent's project-'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 20.07.2010 entered between the parties, the respondent was under an obligations to deliver him possession latest by 20.01.2013. Complainant had purchased allotment rights of booked unit on 23.09.2010 from original allottee. An amount of Rs 22,17,118/- has already been paid against basic sale price of Rs 16,08,004/-. Possession of the unit was offered to complainant on 16.08.2018 alongwith further demand of Rs 5,83,351/-. Said offer was not even accompanied with occupation certificate. The charges raised for club charges and GST in the demand served with offer

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 in his pleadings has not disputed that flat bearing no. P-4-18-GF having area 876 sq ft was allotted to predecessor-in-interest of complainant vide allotment letter dated 24.12.2009 in his above mentioned project and the BBA was entered between the parties on 20.07.2010. 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. Further, Ld. counsel for respondent argued that subsequent allottee is not entitled to any delay interest in support he 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' and para 6 of judgement dated 23.10.2008 of Hon'ble Supreme Court in Civil Appeal no. 3409 of 2003 titled as HUDA vs Diwan Singh.

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. Admittedly, the respondent had sent an offer of possession to complainant on 16.08.2018 alongwith additional demand of Rs 5,83,351/- without obtaining an occupation certificate. The occupation certificate was rather granted one year thereafter on 02.09.2019. So, the offer of possession can be deemed valid only with effect from 02.09.2019. Accordingly, complainant deserves to be awarded delay interest from the deemed date of possession i.e. 20.01.2013 till the date of receipt of occupation certificate i.e.02.09.2019.


6. Now, issue of disputed demands remains to adjudicate upon. Learned counsel for complainant has raised objection to the demand of Rs 50,000/- charged on account of club membership charges and Rs 60,454/- charged on account of GST. The Authority in a earlier decided case of the respondent



bearing complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd has laid down guidelines with regard to allottee's liability to pay club charges and GST charges. The respondent is therefore directed to assess complainant's liability in respect of club charges of Rs 50,000/- and GST charges of Rs 60,454/- in consonance with the principles laid down in Madhu Sareen's case within 45 days of uploading of this order.

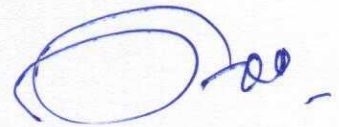
7. Except for the above discussed demands of the club charges and GST charges, the complainant has not disputed his liability to pay other charges demanded vide letter dated 16.08.2018 sent with offer of possession. So, the complainant ought to have paid the remaining amount of Rs 4,72,897/- (5,83,351-50,000-60,454). But he has not paid the same till date and therefore, the complainant is liable to pay said amount Rs 4,72,897/- to the respondent alongwith interest prescribed in Rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%). Such interest will be chargeable from the day when the offer of possession became valid i.e. 02.09.2019 to the date of its payment to the respondent.

8. 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%) for the period ranging from deemed date of possession (20.01.2013) to date of receipt of occupation certificate (02.09.2019).

9. 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' and another judgment dated 23.10.2008 of Hon'ble Supreme Court passed in Civil Appeal no. 3409 of 2003 titled as 'HUDA vs Diwan Singh'. The Authority on perusal of said judgment finds that the same relates to a case filed before National Consumer Redressal Commission. Fate of said cases 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. Moreover, 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.

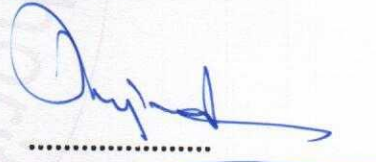
10. The complainant per receipts has paid total amount of Rs 22,17,118/- which includes even the amount of Rs 1,20,829 /- for EDC/IDC, Rs 38,989/- for EEDC and Rs 20,284/- for VAT. The amount of EDC/IDC ,EEDC and VAT is collected by the promoter for payment to the department/authorities entitled to receive 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 20,37,016/- (Rs 22,17,118– Rs 1,20,829– Rs 20,284– Rs 38,989).

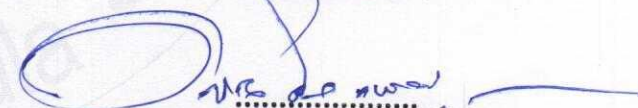


11. The Authority got the delay interest calculated from its Account branch on Rs 20,37,016/- in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (20.01.2013) till date of occupation certificate (02.09.2019) in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%). Such interest works out to Rs 11,56,617/- and it is held payable by the respondent to the complainant.

12. Respondent is directed to issue revised statement of accounts in view of aforesaid observation duly incorporating therein delay interest of Rs 11,56,617/- within 45 days of uploading of this order. The complainant is directed to take possession of unit after paying remaining amount if any within 30 days of receipt of revised statement of accounts.

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


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RAJAN GUPTA
[CHAIRMAN]


.....
ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]