



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 149 of 2021

Neeraj Kumar

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Anil Kumar Panwar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 29.09.2021

Hearing: 3rd

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 had booked a unit on 26.05.2009 in respondent's project-'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 08.02.2012 entered between the parties, the respondent was under an obligations to deliver him possession latest by 08.08.2014. Complainant had purchased allotment rights of booked unit on 04.07.2013. An amount of Rs 19,09,131/- has already been paid against basic sale price of Rs

19,69,329/-. 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-102-FF having area 1025 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 08.02.2012. His plea regarding delivery of possession is that construction is going in full swing and possession will be handed over shortly to the complainant. 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.

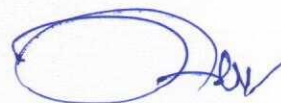
3. Learned counsel for the parties have been heard and record has been perused.

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



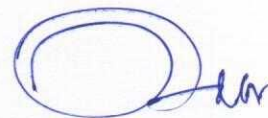
complaint. Viewed from this prospective, the Authority don't find merit in respondent's objection regarding maintainability of the present complaint.

5. The respondent per clause 5.1 of BBA was under an obligation to offer possession latest by 08.08.2014. 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%).

6. 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 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.



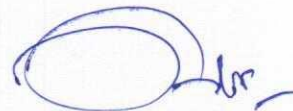
7. The complainant per receipts has paid total amount of Rs 19,09,131/- which includes even the amount of Rs 2,67,669 /- for EDC/IDC and Rs 17,288/- for VAT. The amount of EDC/IDC and VAT is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their 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 16,41,462/- (Rs 19,09,131 – Rs 2,50,381 – Rs 17,288).

8. 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 and 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.

9. The Authority got the delay interest calculated from its Account branch on Rs 16,41,462/- 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 (08.08.2014) till date of order (29.09.2021) in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%). Such interest works out to Rs 10,34,650/- 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 12,721/- to complainant commencing from 29.10.2021.

10. Respondent is directed to pay the amount of upfront delay interest of Rs 10,34,650/- within 45 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest of Rs 12,721/- will commence w.e.f. 29.10.2021 .



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



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]

