



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 79 of 2021

Asha Bhatt

VERSUS

....COMPLAINANT(S)

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:** 3<sup>rd</sup>

**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 21.05.2009 in respondent's project-'Park Elite Floors' situated at Faridabad and in terms of builder buyer agreement (BBA) dated 24.03.2012 entered between the parties, the respondent was under an obligations to deliver him possession latest by 24.09.2014. Complainant had purchased allotment rights of booked unit on 29.09.2009. An

amount of Rs 30,10,354/- has already been paid against basic sale price of Rs 27,79,095/-. 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-127-SF having area 1510 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 24.03.2012. 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.

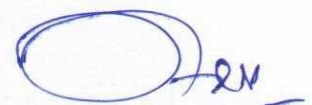
4. The parliament has enacted the Real Estate Regulatory Authority Act for expeditious disposal of the disputes arising between the allottees and the promoters. Section 79 of the RERA Act, 2016 vests exclusive jurisdiction in the Authority to adjudicate the matters concerning discharge of respective 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 24.09.2014. 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.

6. 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



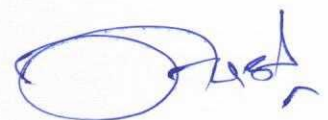
RERA Act,2016. Adopting the said principle of Madhu Sareen's case, the Authority holds the complainants are entitled for payment of delay interest at the rate prescribed in Rule 15 of RERA Rules,2017 i.e. SBI MCLR+2% which as on date works out to 9.30% (7.30%+2.00%).

7. 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 dictum of said judgement is that the allottee cannot claim interest for the delay which was already in existence on the day when he had purchased rights in a particular project. Said proposition cannot be applied in this case because the complainant herein had purchased the unit before lapse of agreed date of possession which per agreement, works out to 24.09.2014. So, there was no delay at all in completion and construction of project in question when complainant had purchased right in the project. In such situation, the interest which the respondent had agreed to pay on account of delay in delivery of possession, to the complainant in terms of BBA entered in year 2012, has to be awarded against the respondent. So, the Authority has no hesitation in holding the complainant entitled to delay interest from deemed date of possession which per agreement comes to 24.09.2014.



8. The complainant per receipts has paid total amount of Rs 30,10,354/- which includes even the amount of Rs 3,86,644 /- for EDC/IDC and Rs 30,342/- 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 25,93,368/- (Rs 30,10,354 – Rs 3,86,644 – Rs 30,342).

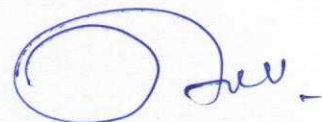
9. The respondent at the time of offering possession will also send a statement of account containing details of outstanding dues payable by complainant. For the purpose of preparing such statement, the demands in respect of which guidelines have been laid down by this Authority in complaint no. 113/2018 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.

10. The Authority got the delay interest calculated from its Account branch on Rs 25,93,368/- 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 (24.09.2014) 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 16,92,248/- 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 20,099/- to complainant commencing from 29.10.2021.

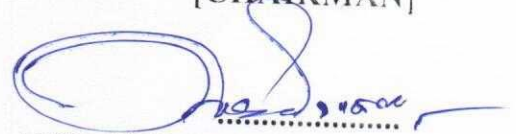
11. Respondent is directed to pay the amount of upfront delay interest of Rs 16,92,248/- within 45 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest of Rs 20,099/- will commence w.e.f. 29.10.2021 .



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



.....  
RAJAN GUPTA  
[CHAIRMAN]



.....  
ANIL KUMAR PANWAR  
[MEMBER]



.....  
DILBAG SINGH SIHAG  
[MEMBER]

