



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO.1070 OF 2018

Manoj Kumar
M/s BPTP Pvt Ltd.

VERSUS

....COMPLAINANT(S)
...RESPONDENT(S)

2. COMPLAINT NO.1071 OF 2018

Ranjeet Kumar
M/s BPTP Pvt Ltd.

VERSUS

....COMPLAINANT(S)
...RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 22.09.2021

Hearing: 18th

Present: -Mr. Nitin Kant Setia, Counsel for the Complainant
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent.

ORDER: (ANIL KUMAR PANWAR-MEMBER)

On the last date of hearing following order was passed:-

"The above referred two complaints involve similar controversy for adjudication and are in respect of the same project of the respondent. So, both these complaints are being dealt with by the present single order.

2. *The complainants herein had booked the flats in the year 2009 and allotment letters were issued to them in the year 2010. Thereafter, the builder buyers agreements (BBAs) were executed between the parties and in terms of the said agreements, respondent was obliged to deliver the possession to the complainants latest by 30.06.2014.*

3. *The complainants received an offer of possession on 14.03.2018 but they did not accept the said offers because it was accompanied by demands which, according to them, were unjustified.*

4. *The relief claimed in the complaints is for quashing the demands and for delivery of possession alongwith interest on the already paid amount for the period by which possession was delayed.*

5. *The respondent resisted the complaints filed averring that they had already cancelled the allotments made to complainants due to non payment of demands which they were obliged to meet in terms of BBA. The Authority vide its order dated 23.10.2019 has already concluded that the cancellation relied upon by the respondent cannot be acted upon and the complainants are entitled to relief of possession alongwith delay interest.*

6. *So, the very first question now needs adjudication is about the complainants' liability to meet the demands raised by the respondents. The complainants are challenging the validity of demands pertaining to four components, namely, (i) the amount of cost escalation, (ii) the amount of enhanced EDC, (iii) the amount of club charges and (iv) the amount of GST. It is not disputed that this Authority while dealing with these four demands in an earlier decided complaint case no. 113/2018 titled as "Madhu Sareen Versus BPTP Ltd." decided on 16.07.2018 which pertains to the same project which is subject matter of this case, had adjudged the above referred four demands as illegal. The Authority does not find any reason for taking a contrary view with respect to the same demands in the present case. So, the demands pertaining to cost escalation, enhanced EDC, Club charges and GST being raised against the complainants are adjudged as not payable for the reason spelt out in the Madhu Sareen case. Accordingly, the respondents are directed to deliver the possession to the complainants without charging the above mentioned four components.*

7. Next question requiring determination is as to the period for which the complainants are entitled to interest. The deemed date of possession as per agreement was 30.06.2014 and a valid offer of possession was sent by the respondent to the complainants on 14.03.2018 after obtaining occupation certificate dated 27.02.2018. So, the complainants are entitled for delay interest only for the period from 30.06.2014 to 14.03.2018 in terms of Rule 15 of HRERA Rules, 2017.

8. However, a difficulty is being faced by the Authority for calculating the amount of delay interest because complainants have not filed payment receipts in support of amount paid by them. So, they are directed to place on record the payment receipts before the next date of hearing.

9. Learned counsel for the complainants has next argued for awarding delay interest to the complainants beyond 14.03.2018 to actual date of handing over of possession. His argument on this point is that the offer of possession sent on 14.03.2018 was invalid because same was subject to fulfilment of even these demands which had since been held unjustified in Madhu Sareen's case. The argument however is not acceptable in view of Clause 3.1 of the Builder Buyer Agreement, relevant portion of which reads as under:-
"3.1.The seller/Confirming party shall give Notice of Possession in writing to the Purchaser with regard to the handing over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat in case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of the Flat...."

The above quoted clause of BBA made it obligatory for the complainants to take possession within 30 days of the offer of possession and the complainants because of this clause were not entitled for extension of time for taking possession merely because they intend to raise any issue in respect of some components of accompanied demands. The only course available to the complainants was to accept the possession within 30 days or to obtain an injunction order from competent court by filing a lis before the expiry of said period of 30 days for challenging the demands which according to

them were not payable. The complainants have allowed the period of 30 days to lapse without taking such recourse. They had approached this Authority with the present complaints after a gap of more than 9 months and that too, without paying the amounts which according to them were not in dispute. So, the Authority is of the considered opinion that the complainants being bound by the above referred clause of BBA are not entitled to argue that the date of offer of possession shall be extended beyond 14.03.2018 to the date of actual taking over of possession.

10. Lastly, the learned counsel for the complainants has argued for awarding that the pendentlite interest to the complainants from the date of filing of the complaint till actual payment or adjustment of the amount payable as delay interest. Once the Authority has already concluded that the complainants are not entitled to have the date of offer of possession extended beyond the date on which the offer was actually made to them, grant of pendentlite interest too will not be prima facie permissible because awarding of such interest will ipso facto result in awarding the delay interest beyond 14.03.2018.

11. Faced in the above said situation, learned counsel for the complainants seek adjournment to further address the Authority on the question pertaining to pendentlite interest. So, the case is adjourned to 22.09.2021 for arguments and for filing of payments receipts by the complainant”.

2. Learned counsel for the complainants, while resuming his arguments for grant of pendentlite interest, has today cited judgements passed in Appeal no. 855/2018 titled as Vision India Realtors Pvt Ltd vs Sanjeev Malhotra by Hon'ble National Consumer Disputes Redressal Commission dated 13.06.2018, in Complaint case no. 354/2015 titled as Utpal Trehan vs DLF New Gurgaon Home Developers Pvt Ltd passed by Hon'ble State Consumer Redressal Commission dated 20.06.2019 and in O.M.P. (COMM) 271/2018 titled as Sh. Chander Mohan

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vs. DLF Home Developers Ltd. passed by Hon'ble Delhi High dated 28.03.2019.

3. The Authority on perusal of above cited judgements finds that the same are not applicable to the case in hand. The offer of possession in the cited cases was held illegal and it was for this reason that the interest liability of the respondent was ordered to continue even beyond the date of offer of possession. The Authority, however, in present case has already concluded vide its order dated 29.07.2021 which is reproduced herein before, that a valid offer of possession was sent by the respondent to complainant on 14.03.2018 after obtaining occupation certificate on 27.02.2018. So, the interest liability of the respondent on account of delay in offering possession cannot continue beyond 14.03.2018 on which a valid offer of possession was sent to the complainants. Accordingly, the complainants are held entitled for delay interest only from deemed date of possession (30.06.2014) to date of occupation certificate (14.03.2018).

4. As regards the demands accompanying the offer of possession, it is suffice to mention that Authority had laid down guidelines for calculating various components of the impugned demands namely cost escalation, enhanced EDC, Club charges and GST in an earlier decided case of respondent disposed of on 16.07.2018 bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd. The demands served upon the complainants with offer of possession for paying cost escalation, enhanced EDC, Club charges and GST were not calculated as per

those guidelines and therefore charges demanded under these heads are held as not payable by the complainant till the same are revised and calculated as per guidelines of Madhu Sareen's case. So, the respondent is directed to recalculate various components of impugned demands in consonance with principles of Madhu Sareen's case and shall thereafter serve fresh demands upon the complainants. In case, any of complainants is dissatisfied with any of the demand so raised, he will be at liberty to file a fresh complaint to challenge validity thereof.

5. Complainant has filed payment receipts in support of payment made in both captioned complaints. In complaint no. 1071/2018 the complainant per receipts has paid total amount of Rs 23,99,561/- which includes even the amount of Rs 1,37,240/- for EDC/IDC, Rs 2,71,024/- for EEDC and Rs 47,429/- for VAT. The total amount of Rs. 4,55,693 /- (137240+271024+47429) collected under these heads was payable to the government departments and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest only to the departments entitled to receive the amounts. How can the complainant in such situation legitimately claim delay interest on the amount of Rs. 4,55,693 /- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 4,55,693 /- is payable to the complainant. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs. 19,43,868 /- (23,99,561-4,55,693).



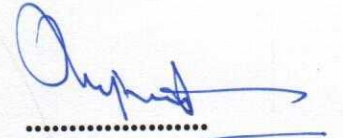
6. The Authority got the delay interest calculated on Rs 19,43,868/- in terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (30.06.2014) till date of offer of possession (14.03.2018). Such interest works out to Rs 6,70,123/- and it is held payable by the respondent to the complainant.

7. In complaint no. 1071/2018 the complainant per receipts has paid total amount of Rs 23,39,465/- which includes even the amount of Rs 1,37,240/- for EDC/IDC, Rs 2,64,805/- for EEDC and Rs 23,067/- for VAT. The total amount of Rs. 4,25,112 /- (137240+264805+23067) collected under these heads was payable to the government departments and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest only to the departments entitled to receive the amounts. How can the complainant in such situation legitimately claim delay interest on the amount of Rs. 4,25,112/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 4,25,112 /- is payable to the complainant. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs. 19,14,353/- (23,39,465-4,25,112).

8. The Authority got the delay interest calculated on Rs 19,14,353/- 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 (30.06.2014) till date of offer of possession (14.03.2018). Such interest works out to Rs 6,59,947/- and it is held payable by the respondent to the complainant.

9. Respondent is directed to pay the complainants an amount of Rs 6,70,123/- as delay interest in complaint no. 1070/2018 and an amount of Rs 6,59,947/- as delay interest in complaint no. 1071/2018 within 45 days of uploading of this order on the website alongwith revised statement of accounts in view of aforesaid observations. Complainant is also directed to take possession of the unit after paying remaining balance amount within 45 days of the receipt of revised demand letter.

10. **Disposed of** in above terms. Order be uploaded on website and 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]