



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1011 OF 2020

Rakesh Sharma

....COMPLAINANT(S)

VERSUS

M/s BPTP Ltd

....RESPONDENT(S)

**CORAM: Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 08.09.2021

Hearing: 7th

Present: - Mr. Rakesh Sharma, complainant. (Through VC)
Mr. Hemant Saini, Counsel for the respondent.
Mr. Himanshu Monga, Counsel for the respondent.

ORDER (ANIL KUMAR PANWAR-MEMBER)

1. Sans of un-necessary details, the complainant's case is that original allottee Mr. Surjeet Pruthi was allotted Villa no. VL1-11-GF having super area of 1478 sq. ft. in the respondent's project Park-81, Parklands. The said unit was later endorsed on 09.12.2011 in favor of the present complainant Mr. Rakesh Sharma who had purchased allotment rights from original allottee. Builder Buyer Agreement (BBA) was entered between the parties on 11.04.2012 and in terms of the said agreement, respondent was obliged to deliver possession to the

complainant latest by 11.10.2015. Complainant had already paid an amount of Rs. 35,14,259.18/- against the basic sale price of Rs.33,63,006. Possession was offered to the complainant on 22.07.2020 but the complainant did not accept the offer because the said unit was not suitable for possession as there was no connectivity of road and infrastructure was not laid down. Further a demand of Rs. 13,61,802.27/- was raised and delay interest was not adjusted in the said offer. Complainant also alleges that demand of Rs. 1,46,765.40 on account of cost escalation is not justified. So, his prayer now is for delivery of possession of the booked unit on payment of outstanding dues after adjusting amount of delay interest.

2. The respondent has contested the complaint raising an objection regarding its maintainability on the ground that dispute between the parties, in term of BBA, is referable to an arbitrator. The respondent's further plea is that construction of the unit is in full swing and the possession of the unit will be handed over shortly. For cost escalation it is submitted that as per clause 20.17 of the duly executed agreement the complainant is bound to pay the same.

3. Learned counsels 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. As regards offer of possession sent to the complainant on 22.07.2020, there is no escape from the conclusion that said offer was not a valid offer because it is nowhere respondent's plea that the project had been completed. Rather, the respondent's plea in the written statement is that the construction is in full swing and possession of the booked unit will be handed over after completion of construction work. So, the offer dated 22.07.2020 is untenable and hereby quashed with a direction to respondent that he shall issue a fresh offer of possession to the complainant after completion of the project and after obtaining occupation certificate.

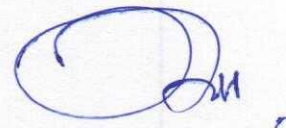
6. Now coming to the legality of demand of Rs. 13,61,802.27/- sent with the offer of possession. This Authority in another case of the present respondent disposed of with lead case no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd decided on 16.07.2018, has laid guidelines for calculating various components of demands such as increase in super area, cost escalation, power back up installation charges; cost of electrification and STP charges, service tax; GST, VAT, Preferential location charges, car parking charges, club membership



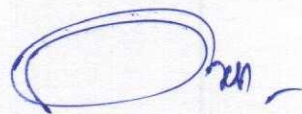
charges, EDC & IDC and EEDC. The respondent is directed to recalculate the demands as per said guidelines and shall serve a fresh statement of demands to the complainant who will be at liberty to file a fresh complaint in case, they have some grievance in respect of any of the demands so made.

7. The possession as per BBA was required to be delivered latest by 11.10.2015 and since the respondent could not offer possession by that date, the complainant is entitled for delay interest from 11.10.2015 to the date on which the respondent will offer a valid possession to the complainant after receiving occupation certificate.

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 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.



9. Adopting the aforesaid principle of Madhu Sareen's case, the Authority will get 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%).
10. As per the statement of accounts of the respondent dated 22.07.2020 the amount already paid by the complainant is Rs. 35,14,259.18. However, on perusal of record it is found that complainant has annexed receipts of Rs. 33,10,622.29/-. The amount of Rs. 33,10,622.29/- includes Rs. 2,13,669/- paid for EDC/IDC and timely discount amounting to Rs. 87,361.66/-. The amount of Rs. 2,13,669/- collected under this head 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. 2,13,669/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 2,13,669/- is payable to the complainant. Delay interest is not payable on timely payment discount as well. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs. 32,13,228.52 (35,14,259.18- 2,13,669- 87,361.66). Receipts of only Rs. 33,10,622.29 are placed on record by the complainant. Therefore, on the amount of Rs. 2,03,636.89 (35,14,259.18-33,10,622.29) will be calculated from the date of statement of accounts that is 22.07.2020 in this case.



11. The respondent has not delivered possession on 11.10.2015 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 32,13,228.52 was calculated 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 (11.10.2015) till date of passing of this order (08.09.2021). Such interest works out to Rs. 15,24,160/- 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. 24,902/- to complainant commencing from 09.10.2021.

12. The Authority further orders that while upfront payment of Rs. 15,24,160/- 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. 24,902/- will commence w.e.f. 23rd September, 2021, payable on 23rd October 2021 onwards.

13. 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.



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]