



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1318 OF 2020

Dinakar M Salunke and Madhuri Salunke

....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: 6th

Present: - Mr. Kanhaiya Prabhakar, Counsel for the 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 present complaint is filed by Dinakar M Salunke who was allotted unit no. OM12-06-GF having super area of 1478 sq. ft. in the respondent's project Park-81, Parklands on 20.06.2011. Builder Buyer Agreement (BBA) was entered between the parties on 07.07.2011 and in

terms of the said agreement, respondent was obliged to deliver possession to the complainant latest by 06.01.2015. Complainant had already paid an amount of Rs. 36,52,800.26/- against the basic sale price of Rs.34,74,547/-. Complainant alleges that demand of Club Membership charges and GST is not justified. So, her prayer now is for delivery of possession with occupation certificate along with delay interest as per Rule 15 and to quash the impugned demands.

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 plea is that construction of the unit is in full swing and possession of the unit will be handed over shortly. For EEDC it is submitted that it is charged as per law. For club it is submitted by the respondent that a temporary club has been provided to the residents of PARK-81 Project.

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. Admittedly, the respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation certificate of the project in question. It is nowhere pleaded that the respondent has offered to the complainant some alternative unit similar to the booked one at any point of time. So, the Authority has no hesitation in concluding that the complainant is entitled for the delay interest from the deemed date i.e., 06.01.2015 to the date on which a valid offer is sent to her after obtaining occupation certificate.

6. Now coming to the legality of demand of Club Membership charges and GST, 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. 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 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.

8. 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%).

9. As per the receipts annexed by the complainant the amount already paid by the complainant is Rs. 36,52,800.26/- The amount of Rs. 36,52,800.26/- includes Rs. 2,26,342.6/- paid for EDC/IDC, Rs. 130,855/- for EEDC, Rs. 32,946/- for VAT and timely discount amounting to Rs. 1,43,975.55/-. The amounts collected under these heads was payable to the government departments

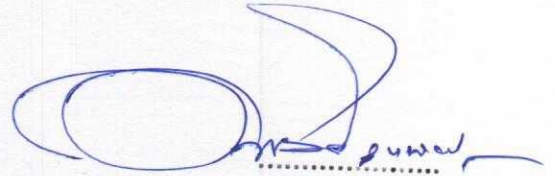
and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest only to the departments entitled to receive the amounts. How can the complainant in such situation legitimately claim delay interest on the amount of Rs. 3,90,143.6 collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 3,90,143.6/- 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. 31,18,681.11 (36,52,800.26 - 3,90,143.6 - 1,43,975.55).

10. The respondent has not delivered possession on 06.01.2015 which was the deemed date of possession per builder buyer agreement. Delay interest on the earlier mentioned amount of Rs 31,18,681.11 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 (06.01.2015) till date of passing of this order (08.09.2021). Such interest works out to Rs. 17,97,910/- 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. 24,710/- to complainant commencing from 09.10.2021.


11. The Authority further orders that while upfront payment of Rs. 17,97,910/- 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. 24,710/- will commence w.e.f. 9th September, 2021, payable on 9th October 2021 onwards.

12. 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]

