



Complaint no. 278 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 278 OF 2020

Rakesh Kumar

....COMPLAINANT(S)

VERSUS

BPTP Pvt Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 24.11.2021**

**Hearing: 9<sup>TH</sup>**

**Present: -** Mr. Arjun Kundra, Ld. Counsel for the complainant  
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the  
respondent

### **ORDER (DILBAG SINGH SIHAG-MEMBER)**

While initiating his arguments, Ld. counsel for complainant pleaded that complainant had booked a unit in respondent's project 'Park Elite Floors' situated in Faridabad on 26.05.2009. Allotment letter for unit no. H-02-07-SF having area of 1418 sq ft was issued to him on 24.12.2009. Thereafter respondent vide allotment letter dated 12.06.2012 had informed him about the allotment of another unit bearing no. PE-193-SF having area of 1510 sq ft and consent has been given for said allotment. Builder buyer agreement for unit no.

PE-193-SF was executed between the parties on 31.10.2012 and in terms of clause 5.1 of it, deemed date of handing over of possession was 30.04.2015 (24+6 months). It has been alleged that respondent has not offered possession of the unit even after receiving Rs 27,30,960/- against basic sale price of Rs 27,20,000/-. Feeling aggrieved, this complaint has been filed by the complainant seeking direction against the respondent to deliver possession of unit alongwith delay interest.

2. On the other hand, respondents in their reply have denied all the allegations made by complainant with following submissions:

(i). Complainant cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. Both parties are bound by the terms of builder buyer agreement. Complainant has filed this complaint completely ignoring clause 33 of the agreement which provides that dispute involved therein was supposed to be referred to an arbitrator. Further, present complaint involves disputed questions of fact and law requiring detailed examination and cross examination of several independent and expert witnesses and therefore it cannot be decided in a summary proceedings being adopted by this Authority. So, jurisdiction of this Authority cannot be invoked in this matter by the complainant.

(ii). Complaint is liable to be dismissed in as much as the unit in question is an independent floor being constructed over a plot area tentatively

admeasuring 1418 sq ft. As per section 3 (2) (a) of RERA Act,2016 registration is not required for an proposed to be developed that does not exceed 500 sq meters.

(iii). As far as delay caused in offering possession of the allotted unit is concerned, it has been stated that delay has been occurred due to inaction of the government or its agencies on time , hence, it should be inferred that any delay which has been unfortunately caused due to force majeure circumstances as the same were beyond control of the developer. Further, it has been stated that booking of the unit was accepted by the respondent on the basis of self certification policy issued by DTCP, Haryana. In terms of said policy, any person could construct building in licensed colony by applying for approval of building plans to the Director or officers of department delegated with the powers for approval of building plans and in case of non-receipt of any objection within the situated time ,construction could be started. Respondent applied for approval of building plans but they were withheld by the DTCP despite the fact that these building plans were well within the ambit of building norms and policies. Since there was no clarity in this policy to effect that whether the same is applicable to individual plot owners only and excludes developers/colonizers, the department vide notice dated 08.01.2014 granted 90 days time to submit requests for regularization of construction. Thereafter vide order dated 08.07.2015, DTCP clarified that self certification policy should

also applicable to cases of approval of building plans submitted by colonizer/developer but did not formally release all the plans already submitted by respondent.

(iv). Complainant has concealed the fact that respondent had given additional incentive in the form of timely payment discount amounting to Rs 1,01,029/- to the complainant.

(v). Regarding status of the unit in para 3 (b) of the said reply it has been stated that construction work of unit is in progress and possession will be handed over soon to the complainant.

3. The Authority after hearing the arguments of both the parties and perusing written submissions of both parties observes and decides as follows:

(i) Maintainability of the complaint

Respondent's argument that first the matter should be referred to an Arbitrator, or that questions in dispute are a mixed questions of facts and law therefore the same cannot be tried by this Authority and that the Authority is not having jurisdiction to entertain such complaints because builder buyer agreement was executed much prior to coming into force of RERA Act, 2016, holds no ground vis-à-vis the provision of Section 79, Section 80 and Section 89 of the Act by virtue of which all disputes relating to real estate projects falls within the purview of the RERA Act and can be adjudicated upon by RERA after coming

into force of the Act. Jurisdiction of Civil Courts has been specifically barred to entertain any such complaint in the matter. While RERA Act will not adversely affect lawfully executed agreements between the parties prior to its coming into force in terms of the principles laid down by this Authority in complaint no. 113/2018 Madhu Sareen vs BPTP and complaint no. 49/2018 Prakash Chand Arohi vs Pivotal Infrastructure Pvt Ltd, but after its enactment all disputes arising out of those agreements can be settled only by the Authority and jurisdiction of civil Court stands specifically barred in terms of section 79 of the Act. For this reason, challenge to the jurisdiction of the Authority cannot be sustained.

Apart from above, as far the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floors being constructed on the plots measuring 500 Sq. Mtrs. or less is concerned, it is observed that the respondent has been developing a larger colony covering several hundred acres of land. Some part of the project is being developed in the shape of floors construction on various size of plots with a given FAR (floor area ratio) permitted by the competent authority while approving its zoning plan. Over such plots, 3 to 4 flats are being constructed on each plot and the same are being sold to different individuals. Such practice is permissible in view of provisions of the Haryana Development and Regulation of Urban Areas Act,1975. However, the registrability and



jurisdiction of this Authority has to be determined with reference to overall area of a larger colony being promoted by the developers instead of a single plot of 500 sq mtrs or less. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that plot does not exceeds 500 Sq. Mtrs, therefore there is no jurisdiction of this Authority is not correct from legal point of view. The provisions of Section 3 (2) (a) of RERA Act,2016 are applicable, in case total area of the project is less than 500 Sq, Mtrs. So, the arguments of the respondents in this regard are hereby rejected. The relevant part of Section 3(2)(a) is reproduced for ready reference:-

*“Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required- Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to have developed does not exceed eight inclusive of all phases”.*

As far as contention of the respondent for seeking force majeure in this case as per his pleading recorded in paragraph 2(iii) is concerned, the same does not hold any merit. Respondent has misinterpreted the concept of self certification policy. This policy is a facility given to the owner of any plot to construct his building to be planned by any registered architect and supervised by structural engineer provided such building is in conformity with building bye laws notified by the department of Town and Country Planning or in conformity with Haryana Building Code, 2017. Under this scheme the owner of any plot of licensed colony, is not required to await the approval of building

plans from the competent authority of department of Town and Country Planning rather he is required to submit a copy of proposed building plan to the concerned DTP with a intimation that after expiry of stipulated time of 15 days from the submission of building plan if nothing received in black and white from such authority then he can proceed with the commencement of construction of building and after completion of the same he is also entitled to issue a completion certificate mentioning that building has been raised in conformity with building bye laws and approved zoning plan. In view of the above facts, the averment of the Ld. counsel of the respondent does not hold any merits and hence the same is hereby rejected.

(ii) Offer of possession

Factual position reveals that no offer has been yet made by the respondent to the complainant. In written statement respondent has stated that possession will be offered soon to the complainant. But no specific timeline has been provided. In these circumstances, the respondent is directed to offer possession of unit to the complainant after receiving occupation certificate in terms of principles already decided in complaint no. 113/2018-Madhu Sareen vs BPTP Pvt Ltd.

(iii) Delay interest

In furtherance of above mentioned observations, it is decided that upfront payment of delay interest amounting to Rs 13,52,611 /-calculated in terms of

rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 30.04.2015 (deemed date of possession) to 24.11.2021 (date of order) is awarded to the complainant and monthly interest of Rs 18,122/- shall be payable upto the date of actual handing over of the possession after obtaining occupation certificate. The Authority further orders that the complainants will remain liable to pay the balance consideration amount to the respondent as and when a valid offer of possession duly supported with occupation certificate is made to them.

4. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 23,38,308/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of VAT amounting to Rs 24,606/- and Rs 3,68,046/- paid on account of EDC/IDC from total paid amount of 27,30,960/-. The amount of such taxes is not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

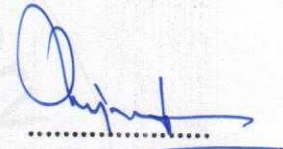




5. It is added that if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

6. Therefore, respondent is directed to pay the complainants an amount of Rs 13,52,611/- as upfront delay interest within 45 days of uploading of this order on the website of the Authority. The monthly interest of Rs 18,122/- will commence w.e.f. 24.12.2021.

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



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RAJAN GUPTA  
[CHAIRMAN]



.....  
DILBAG SINGH SIHAG  
[MEMBER]