HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1437 OF 2020

Lalit Kumar Saini ....COMPLAINANTS(S)

VERSUS

M/s BPTP Ltd and Another ....RESPONDENT(S)

CORAM: Rajan Gupta **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 24.11.2021

Hearing:9th

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-03-15-FF having area of 1022 sq ft was issued to him on 24.12.2009. Thereafter Builder buyer agreement was executed between the parties on 08.07.2010 and in terms of clause 4.1 of it deemed date of handing over of possession was 08.01.2013

(24+6 months). Complainant has already paid Rs 25,39,249/- against basic sale price of Rs 20,55,999/-. Possession of the unit was offered to the complainant on 15.09.2020 alongwith further demand of Rs 5,37,677/-. Said offer was not supported with occupation certificate. In demand letter, a number of charges raised on account of GST; club charges; cost escalation; increase in area from 1022 sq ft to 1168 sq ft and EEDC have been impugned. Complainant claimed that he did not accept offer of possession due to unjustified demands, non-adjustment of interest payable to complainant on account of delay in handing over of possession in the absence of occupation certificate. Feeling aggrieved, this complaint has been filed by the complainant who is seeking direction against respondent to deliver possession of unit alongwith delay interest and also quash unjustified demand.

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 1022 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 released 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 76,402/- to the complainant.

(v). So long as issue of increase in area is concerned, it has been submitted that complainant was duly informed about said increase and demand of Rs 2,40,800/- was raised for it. Same has already been paid by the complainant on 20.07.2011. Now complainant cannot dispute it after lapse of 9 years.

(vi). After completing construction work of the unit, offer of possession was made to complainant on 15.09.2020 alongwith demand on account of

various charges which were duly agreed between the parties as per terms of BBA. All charges demanded by respondent are in consonance with the terms of BBA. It is the complainant who was at fault by not coming forward to take possession of the unit after paying due amount as demanded alongwith offer of possession.

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 n sub-section (1) , no registration of the real estate project shall be required-*
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> *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

Admittedly respondent has issued offer of possession dated 15.09.2020 to the complainant alongwith demand for payment of additional Rs 5,37,677/-. However, said offer was not accompanied with occupation certificate issued by State government agency. Today, ld. counsel for the respondent stated that developer had applied for grant of Occupation Certificate in year 2019 but the same has not been received till date. In these circumstances, impugned offer of possession is not a valid offer of possession in the eyes of law and complainant was not bound to accept the same. Therefore, offer of possession dated 15.09.2020 cannot be called a lawful offer, hence the same is hereby quashed. Therefore, now respondent will offer a fresh possession after receiving

occupation certificate from the department. As a logical consequence, additional demands made alongwith invalid offer of possession also stands quashed.

(iii) Delay interest

In furtherance of above mentioned observations, it is decided that upfront payment of delay interest amounting to Rs 16,13,353/-calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 08.01.2013 (deemed date of possession) to 24.11.2021 (date of order) is awarded to the complainant and monthly interest of Rs 17,459/- shall be payable upto the date of actual handing over of the possession after obtaining occupation certificate. Authority further orders that complainant 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 him.

4. Delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 22,52,713/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of VAT amounting to Rs 23,274/-, Rs 99,003/- on account of EEDC and Rs 1,64,259/- paid on account of EDC/IDC from total paid amount of 25,39,249 /-. Said amount of

taxes is not payable to the builder and are rather required to passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department, then interest thereon becomes payable only to the department concerned and 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 allotee 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. Lastly, as far as demand raised by respondent in lieu of increase in area, it is observed that respondent has not provided any justification to the complainant for it. In case, any such demand is raised, respondent is directed to provided component wise detail of increased area in terms of principles laid down in complaint no. 607/2018 titled as Vivek Kadyan vs TDI Infrastructure Pvt Ltd alongwith copy of revised building plan if any showing increase in area to the complainant in order to justify increased area.

7. Therefore, respondent is directed to pay the amount of upfront delay interest of Rs 16,13,353/- within 45 days of uploading of this order on the

website of the Authority. The monthly interest of Rs 17,459/- will commence w.e.f. 24.12.2021 .

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

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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]