



Complaint no. 731 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 731 OF 2020

Manik Giri

....COMPLAINANT(S)

VERSUS

M/s B.P.T.P Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 30.11.2021**

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

**Present :-** Mr. Nitin Kant Setia, Counsel for the complainant through VC.  
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent

### **ORDER (RAJAN GUPTA-CHAIRMAN)**

Mrs. Padmashree Giri had booked a unit in respondent's project 'Park Elite Premium' situated in Faridabad on 23.07.2009. Allotment letter for unit no. J-701 having area of 1128 sq ft was issued to her on 16.12.2009. Thereafter Builder buyer agreement was executed between the parties on 10.01.2011 and in terms of clause 3.1 of it, the possession was supposed to be delivered by 10.07.2014 (36+6 months). It has been alleged that respondent has not offered possession of the unit even after receiving Rs 28,94,717/- against basic sale price

of Rs 22,80,997/-. Complainant who is husband of Mrs. Padmashree Giri got his name substituted in place of her as allottee on 06.11.2019 which was duly acknowledged by respondent vide letter dated 16.01.2020. Present complaint has been filed by the complainant seeking direction against the respondent to deliver possession of unit alongwith delay interest.

2. Respondent in their reply have denied the allegations made by complainant and has made 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 despite as per clause 33 of the agreement dispute involved herein 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 manner by this Authority. For these reasons, 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 1128 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). Regarding delay caused in offering possession of the allotted unit it has been stated that delay has been occasioned due to inaction of the government or its agencies , hence, it should be inferred that any delay has been unfortunately caused due to force majeure circumstances beyond control of the developer. Further, it has been stated that the 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 , the 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 the 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 shall also apply 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 85,969/- to the complainant.
- (v). Regarding possession of unit, it has been stated in para 4 (vi) and (xiii) that construction work is going in full swing and possession will be handed over shortly. Further it has been stated that respondent had already applied for occupation certificate on 10.05.2019 for tower-J which for all documentary formalities is tower-F and Chief engineer, HSVP Panchkula had already carried out inspection and submitted his report dated 21.09.2019 wherein it has been stated that external and internal services in the project are complete and functional. Further it has been stated that thereafter upon application for the fire NOC the respondent was instructed to construct an additional external fire staircase due to subsequent change in fire norms which was contrary to the sanctioned fire plan. After construction of additional staircase, the respondent has received fire NOC from DG-fire services on 24.02.2020. Thereafter, the major issue got struck in the wake of pandemic COVID-19 due to which the documentary works got delayed and occupation certificate has not been received till date.

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

(i) Maintainability of complaint





The 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 in the face of the provision of Section 79, Section 80 and Section 89 of the Act by virtue of which all disputes relating to the 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. The 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.

Regarding 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., it is observed that the respondent is developing a





larger colony over the several acres of land. One portion of the project is floors on small size of plots, 3 to 4 flats are being constructed on each floor and the same are being sold to different individuals. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that since the plot does not exceeds 500 Sq. Mtrs, the jurisdiction of this Authority is untenable. The provisions of Section 3(a) are applicable, if the total project area is assessed less than 500 Sq, Mtrs. If such area in the larger colony in fact run into several acres, the arguments of the respondents in this regard 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 as he has already applied for occupation certificate on 10.05.2019 however it has not been received till date. Moreover, no specific timeline has been provided by the respondent. 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

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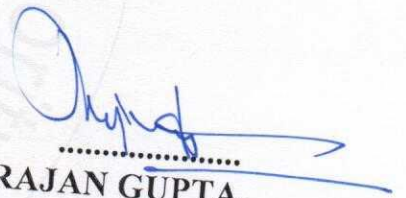
In furtherance of above mentioned observations, it is decided that upfront payment of delay interest amounting to Rs 16,07,905/- calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 10.07.2014 (deemed date of possession) to 30.11.2021 (date of order) is awarded to the complainant and monthly interest of Rs 18,120/- shall be payable upto the date of actual handing over of the possession after obtaining occupation certificate. The Authority further orders that the 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. Total paid amount alleged by the complainant in the complaint petition is Rs 28,94,717/-. A difficulty however is being faced by the Authority is that parties have provided receipt of Rs 28,40,276 /- only. For purpose of calculating delay interest, total amount is taken as Rs 28,40,276 /-. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 23,38,123/- . Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,70,537/- and Rs 3,31,616/- paid on account of EEDC from total paid amount of 28,40,276 /-. The amount of such 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 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. Respondent is directed to pay the complainants an amount of Rs 16,07,905/- as upfront delay interest within 45 days of uploading of this order on the website of the Authority. The monthly interest of Rs 18,120/- will commence w.e.f. 30.12.2021.
7. **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]