



Complaint no. 535 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 535 OF 2020

Punnet Gupta and Pooja Gupta

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

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

**Chairman  
Member  
Member**

**Date of Hearing: 22.09.2021**

**Hearing: 4<sup>th</sup>**

**Present: -** Mr. Rahul Rathore, Counsel for complainant (through video conferencing)  
Mr. Himanshu Monga, Counsel for the respondent

### **ORDER (ANIL KUMAR PANWAR-MEMBER)**

1. Complainant herein is seeking possession of unit no. CL3-08-SF having area 1487 sq. ft situated in respondent's project namely Park-81, Parklands, Faridabad. Builder buyer agreement was executed between the parties on 03.01.2011 and in terms of clause 5.1 of said agreement, possession was supposed to be delivered latest by 03.07.2013. Complainant has already paid Rs

31,22,457.29/- against basic sale price of Rs. 29,24,080/-. Possession of the unit was offered to him on 19.02.2020 without occupation certificate along with further demands raised under various heads for a total amount of Rs 12,13,545.87/-. This demand included Rs. 1,53,315/- on account of cost escalation, Rs. 1,42,000/- for increase in super built up area from 1487 sq. ft. to 1643 sq. ft., Rs. 50,000/- for club membership charges, Rs. 90,393.99 for electrification and STP charges and STP has not been installed in the project, Rs. 78,008.26/- for advance yearly maintenance charges, GST, Service tax, VAT etc., EDC/IDC and EEDC. These demands according to the complainant are illegal and not payable to the respondent.

2. Feeling aggrieved, the complainant has filed the present complaint seeking direction against respondent to deliver possession of allotted unit along with delay interest as per duly executed FBA and to revise demand letter dated 19.02.2020 as per the guidelines laid down in complaint case no. 113 of 2018 titled as Madhu Sareen vs BPTP Ltd.

3. Respondent has contested the complaint by raising the preliminary objection against its maintainability. The plea raised is that the dispute between the parties in terms of Builder Buyer Agreement (BBA) is referable to the Arbitrator, and therefore, no complaint is maintainable before this Authority.

As regards possession, it has been averred that the same has already been offered to the complainant on 19.02.2020. The respondent has defended the impugned demands. His plea is that the Club Membership Charges are payable by

the complainant because a temporary club facility is already available in the project. The respondent has also defended the increase in super area averring that the increase to the extent of 15% is permissible in terms of agreement entered between the parties.

4. Learned counsel for the parties have been heard and record has been perused.

5. 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.

6. Undisputedly respondent has issued offer of possession dated **19.02.2020** to the complainant but said offer was not accompanied with occupation certificate issued by competent authority. In these circumstances, the impugned offer of possession cannot be called a valid offer of possession in eyes of law and complainant was not bound to accept the same. Therefore, the offer of possession

dated **19.02.2020** stands quashed. Now, the respondent will offer a fresh offer of possession to the complainant after receiving occupation certificate from the concerned department. As a logical consequence, the additional demands made along with invalid offer of possession also stands quashed. Respondent at the time of offering possession will also send a statement of account containing details of outstanding dues payable by complainant. For the purpose of preparing such statement, the demands in respect of which guidelines have been laid down by this Authority in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018 shall be strictly followed. The complainant shall be under an obligation to accept the offer of possession made after obtaining occupation certificate and shall also be liable to pay all the demands raised in the accompanying statement of accounts within 30 days of receipt of statement of account and offer of possession. He will not be entitled to escape his liability in paying accompanied demands merely on the plea that some of those demands are unjustified. So, he will be at liberty to expeditiously take legal recourse for challenging unjustified demands if any or to obtain stay order against payment of impugned demands except for the eventuality when he has obtained a specific restraint order qua some demand. The complainant will be liable to meet the demands within 30 days of the receipt of offer of possession and statement of account failing which the respondent will be at liberty to initiate proceedings for cancellation of his allotment. Respondent shall refund the amount, if any to the complainant if fresh statement of accounts at the time of offering possession requires so.

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 because the complainant's own prayer in the complaint is for awarding delay interest of Rs. 5/- per sq. ft. of super area as mentioned in the Builder Buyer Agreement (BBA). The Authority regrets its inability to accept respondent's contention on this point, for the reasons mentioned hereunder: -

- i) It has been provided in BBA that the rate of interest payable to the respondent by the complainant for non-payment of instalments on time shall be 18% per annum and the rate of interest payable to the complainant by the respondent for non-delivery of possession on agreed date will be Rs. 5/- per sq. ft. of super area. The rate of interest calculated at Rs. 5/- per sq. ft. of super area works out much lower than the rate of 18% per annum. "Section 2(z) of the Real Estate (Regulation and Development) Act, 2016" mandates that the rate of interest payable by the promoter and the allottee on account of their respective defaults to discharge timely obligations towards each other, shall be same and there should be no disparity in these rates. The Authority thus owes a statutory duty to ensure parity in respect of rate of interest payable by the promoter and the allottee on account of delay occurring in discharge of their



respective duties towards each other. The spirit of law enshrined in Section 2(za) for maintaining equality in the rate of interest cannot be allowed to be vitiated merely because different rates of interests were prescribed in BBA.

ii) Significantly, BBA in this case was not executed on the day when the respondent had allotted the unit in the year 2010. Rather, BBA was executed in the year 2011 when the allottee had already parted with a hefty amount of Rs. 12,65,772.55/- in favour of the respondent. So, no choice was left with the allottee but to sign a BBA containing dis-proportionate rate of interest for the allottee and the promoter for their respective default in discharge of timely obligations. Neither any justification for charging unequal rate of interest was spelt out in the BBA nor the respondent's counsel at the time of arguments could furnish such justification. The spirit of law enshrined in Section 2(za) of the RERA Act for maintaining parity in the rate of interest payable to the promoter and the allottee, thus deserves to be strictly adhered.

iii) The matter can be further scrutinized even from a different angle. An allottee irrespective of the rate of interest stipulated in BBA, after coming into force of the RERA Act, draws a statutory right

under Section 2(z) for payment of interest at the rate on which the promoter has been charging interest from him on the amounts of instalments not paid on time. Such statutory right of allottee cannot be defeated merely because said allottee due to ignorance on his own part or on the part of his counsel had demanded interest as per BBA rather than demanding the same at the rate statutorily permissible to him. Section 2(z) casts a duty upon the Authority to ensure parity between the rate of interest payable by the promoter and the allottee and therefore, the Authority irrespective of the prayer made in pleadings, must grant interest to the allottee at the statutory rate of interest.

For the above-mentioned reasons, the Authority has no hesitation to conclude that the complainants are entitled to delay interest on the already paid amounts viz. Rs. 31,29,398.94/- at the rate prescribed under Rule 15 of the HRERA Rules from the deemed date of possession i.e. 03.07.2013 to the date of giving valid offer of possession after obtaining occupation certificate.

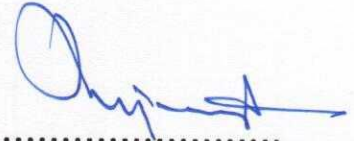
8. As per the statements of accounts issued by the respondent dated 19.02.2020 the amount already paid by the complainant is Rs. 31,29,398.94/-. However, receipts of only Rs. 27,60,868.24/- have been submitted by the complainant. The amount of Rs. 27,60,868.24/- includes Rs. 1,36,118.04/- paid for EDC/IDC, Rs. 1,32,163/- for EEDC, Rs. 28,350/- for VAT and timely discount

amounting to Rs. 60,496.1/- The total amount of Rs. 2,96,631.04 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. 2,96,631.04 collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 2,96,631.04 is payable to the complainant. Delay interest payable to the complainant, in other words, deserves to be calculated only on the balance amount of Rs. 28,32,767.9 (31,29,398.94-2,96,631.04). Receipts of only Rs. 27,60,868.24 are placed on record by the complainant. Therefore, on the amount of Rs. 3,68,530.7 (31,29,398.94 - 27,60,868.24) delay interest will be calculated from the date of statement of accounts that is 19.02.2020 in this case. Interest works out to Rs. 17,75,054/- 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. 21,954/- to complainant commencing from 23.10.2021.

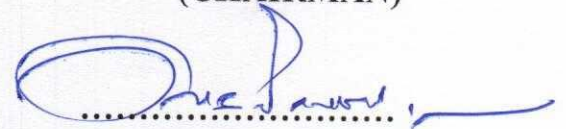
9. The Authority further orders that while upfront payment of Rs. 17,75,054/- as delay interest shall be made within 45 days of uploading of this order on the website of the Authority, the monthly interest of Rs. 21,954/- will commence w.e.f. 23<sup>rd</sup> October 2021 onwards.



10. 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.



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**RAJAN GUPTA**  
**(CHAIRMAN)**



.....  
**ANIL KUMAR PANWAR**  
**(MEMBER)**



.....  
**DILBAG SINGH SIHAG**  
**(MEMBER)**

