



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 77 OF 2021

Chandan Singh

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

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

**Chairman
Member
Member**

Date of Hearing: 22.09.2021

Hearing: 3rd

Present: Shri Rahul Rathore, Counsel for the Complainant.

Shri Hemant Saini and Shri Himanshu Monga, Counsel for the
Respondent.

ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. Sans of un-necessary details, the complainant's case is that he was allotted unit no. OM28-05-GF having super area of 1478 sq. ft. in the respondent's project Park-81, Parklands Faridabad on 20.06.2010. Builder Buyer Agreement (BBA) was entered between the parties on 08.07.2011 and in terms of the said agreement, respondent was obliged to deliver possession to the complainant latest by 08.01.2015. Complainant had already paid an amount of

Rs. 47,01,159/- against the basic sale price of Rs.35,82,007/-. Possession was offered on 04.10.2018 without occupation certificate along with several demands viz. electricity connection charges Rs. 34,000/-, cost escalation charges Rs. 1,52,028/-, club membership charges Rs. 50,000/-, electrification charges Rs. 89,499/-, service tax Rs. 77,704/- VAT charges Rs. 33,849/-, GST charges Rs. 1,50,082/-, maintenance charges amounting to Rs. 75,872/- and increase in BSP on account of increase in area from 1478 sq. ft. to 1531 sq. ft.

2. Feeling aggrieved, present complaint has been filed by the complainant seeking direction against respondent to deliver possession after obtaining Occupation certificate along with delay interest and for quashing demands which are allegedly not payable to the respondent.

3. Respondent has contested the complaint by raising preliminary objection against its maintainability as according to him, the dispute in terms of Builder Buyer Agreement (BBA) entered between the parties is liable to be adjudicated only by an Arbitrator. Respondent has further pleaded that there was no delay on his part because he has already offered the possession to the complainant vide letter dated 04.10.2018. As regard the impugned demands, the respondent's plea is that the demands were raised within the ambit of BBA and the complainant is therefore, liable to meet those demands.

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

(i) Maintainability of complaint

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.

(ii) Offer of possession

Undisputedly respondent has issued offer of possession dated **04.10.2018** to the complainant but said offer was not accompanied by occupation certificate issued by competent authority. No averment even in respondent's reply was made with respect to obtaining of occupation certificate. 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 **04.10.2018** stands quashed. The respondent will therefore, send 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. However, he will be at liberty to expeditiously take legal recourse for challenging unjustified demands if any and 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.

(iii) Delay interest

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. 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%).

Complainant has annexed the receipts of Rs. 46,67,313.24/- The amount of Rs. 46,67,313.24/- includes 2,26,342.6 paid for EDC/IDC, Rs. 1,30,855/- paid for EEDC and timely discount amounting to Rs. 1,48,996.58/-. The amount of Rs. 3,57,197.6/- 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. 3,57,197.6/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 3,57,197.6/- 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. 43,10,115.64 (46,67,313.24-3,57,197.6).

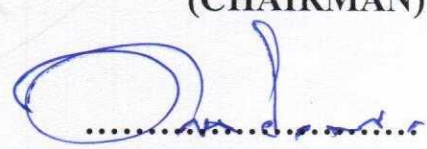
The respondent has not delivered possession on 08. 01.2015 which was the deemed date of possession as per builder buyer agreement. Possession was offered on 04.10.2018 without obtaining occupation certificate which has been declared invalid in this order. Delay interest will now run from the deemed date of possession till the date respondent offer possession to the complainant after receiving occupation certificate. Delay interest on the earlier mentioned amount


of Rs 43,10,115.64/- 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 (08.01.2015) till date of passing of this order (22.09.2021). Such interest works out to Rs. 22,24,820/- 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. 33,403/- to complainant commencing from 23.10.2021.

5. The Authority further orders that while upfront payment of Rs. 22,24,820/- as delay interest shall be made within 45 days of uploading of this order on the website of the Authority, and liability for paying monthly interest of Rs. 33,403/- will commence after lapse of said period of 45 days.

6. 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)


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ANIL KUMAR PANWAR
(MEMBER)


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DILBAG SINGH SIHAG
(MEMBER)