



Complaint No. 1916 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1916 OF 2019

Nitya Nand Uniyal

....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: 12th

Present: Shri Rajan Kumar Hans, Counsel for the Complainant through video-conferencing.

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

ORDER: (ANIL KUMAR PANWAR-MEMBER)

1. Complainant's case is that he had bought allotment rights of Unit No. B-607 in respondent's project named Discovery Park, Sector-80, Faridabad from

its original allottee Ashok Taneja in the year 2012. Transfer of allotment rights were duly endorsed by the respondent in his favor on 04.03.2014. Builder Buyer Agreement (BBA) was executed between the respondent and the original allottee of the unit on 19.09.2012 and the respondent in terms of the said agreement was obliged to deliver possession latest by 18.03.2016. Respondent had already been paid an amount of Rs.37,30,576/- against the basic sale price of Rs. 29,06,400/-. Complainant's grievance is that possession has not been delivered till date and therefore, the respondent shall be directed to deliver the possession of the unit along with delay interest.

2. Respondent has contested the complaint by raising preliminary objection against its maintainability averring that the dispute between the parties is liable to be adjudicated by an Arbitrator in terms of BBA. As regards delivery of possession, the plea raised by the respondent is that the possession of the unit will be offered shortly. Complainant had made default in making due payments and the possession time lines were subject to force majeure. So, pleaded the respondent, the complainant is not entitled for delay interest more particularly because he has signed an undertaking on 24.01.2014 for not holding the respondent liable for any delay in completion of the project.

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



4. 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 find no merit in respondent's objection regarding maintainability of the present complaint.

5. Admittedly, the respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation certificate of the project in question. It is nowhere pleaded that the respondent has offered the complainant some alternative unit similar to the booked one at any point of time. Learned counsel for respondent on the strength of an undertaking dated 24.01.2014 signed by complainant which is available on record as Annexure R-3 and whereby the complainant has agreed not to hold the respondent liable for delay occurring on account of change in building plan or modification on area etc., has argued that complainant is not entitled to interest on account of delay in delivery of possession. The Authority regrets its inability to accept the



contention for reason narrated hereinafter. It deserves to be noticed in the first place that the BBA entered with original allottee provided for award of interest to the allottee on account of delay in delivery of possession. Per section 2 (d) of RERA Act,2016 successor of original allottee for all intent and purposes is to be considered as allottee and therefore, the right conferred by BBA on the original allottee with regard to payment of delay interest was available to the present complainant being successor-in-interest. Secondly, the respondent can be allowed to use the undertaking dated 24.01.2014 against the complainant only if it is proved that said undertaking was executed for a valid consideration. Neither any consideration for waiving off the right to claim delay interest by the complainant is spelt out in the undertaking Annexure R-3 nor any explanation thereto could be furnished during the course of arguments. So, the undertaking is obviously unconscionable and unreasonable and the respondent can not draw any benefit from it.

6. That apart, the respondent in this case was under an obligation to deliver possession by **18.03.2016** and he has failed to discharge his obligation in this regard till date. After coming into force of RERA Act,2016, the respondent per section 18 of the Act is liable to pay delay interest to the allottee for each month's delay. Said section thus confers a statutory right on an allottee for receiving delay interest and such statutory right of the complainant even



otherwise cannot be allowed to be defeated by undertaking relied upon by the respondent. So, the Authority will hold the complainant entitled to delay interest from deemed date of possession (18.03.2016) till a valid offer of possession is made after receiving occupation certificate.

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. 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.

8. Adopting the aforesaid principle of Madhu Sareen's case, the Authority will allow 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%).



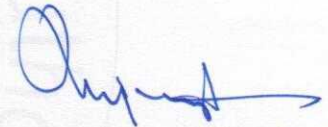
9. As per the statements of accounts issued by the respondent dated 22.06.2019, the amount already paid by the complainant is Rs. 37,30,576/-. However, receipts of only Rs. 34,31,078.75/- have been submitted by the complainant. The amount of Rs. 34,31,078.75/- includes Rs. 2,93,359/- paid for Development charges, Rs. 1,34,196/- for EEDC, Rs. 17,318.41/- for VAT and timely discount amounting to Rs. 31,461.75/-. The amounts 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 paid for taxes. Similarly, the amount adjusted on account of discount allowed by the promoter can not be considered for calculating delay interest. So, no delay interest on amount of Rs. 4,44,873.41/- 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. 32,85,702.59 (37,30,576- 4,44,873.41).

10. The respondent has not delivered possession on 18.03.2016 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 32,85,702.59 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 (18.03.2016) till date of passing of this

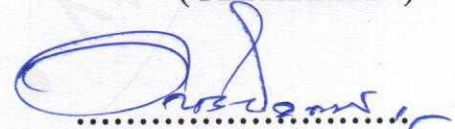
order (22.09.2021). Such interest works out to Rs 14,03,501/- and it is held payable by the respondent to the complainant. For further delay occurring after the date of this order the respondent is liable to pay monthly interest of Rs. 25,464/- to complainant.

11. The Authority further orders that while upfront payment of Rs. 14,03,501/- as delay interest shall be made within 45 days of uploading of this order on the website of the Authority and liability for payment of interest of Rs. 25,464/- for each month delay will commence on lapse of said period of 45 days.

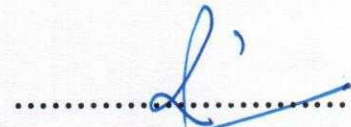
12. Case is **disposed of** in view of above terms. Order be uploaded on the website of the Authority and file be consigned to the record room.



RAJAN GUPTA
(CHAIRMAN)



ANIL KUMAR PANWAR
(MEMBER)



DILBAG SINGH SIHAG
(MEMBER)