



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1917 OF 2019

Chandra Bhushan Thakur

....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 case is that he had bought the allotment rights of Unit No. A-806 in respondent's project named Discovery Park, Sector-80, Faridabad from the original allottee Shikha Chatterjee in the year 2013. Transfer of allotment rights were duly endorsed by the respondent in favor of the complainant on 30.08.2013. Builder Buyer Agreement (BBA) was executed between the respondent and the original allottee of the unit on 12.12.2012 and the respondent in terms of the said agreement was obliged to deliver the possession latest by 12.06.2016. Respondent had already been paid the amount of Rs. 48,80,536/- against the basic sale price of Rs. 38,91,000/-. Complainant's grievance is that possession has not been delivered to the complainant till date, 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 the 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 the payments and the possession time lines were subject to force majeure.

So, pleaded the respondent, the complainant is not entitled for delay interest.

3. Learned counsel for the parties have been heard and record of the case 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 don't find 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 to the complainant some alternative unit similar to the booked one at any point in time. So, the Authority has no hesitation in concluding that the complainant is entitled for the delay interest from the deemed date i.e., 12.06.2016

to the date on which a valid offer is sent to her after obtaining occupation certificate.

6. 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.

7. 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%).

8. As per the statements of accounts issued by the respondent dated 22.06.2019 the amount already paid by the complainant is Rs. 48,80,536.61/-.

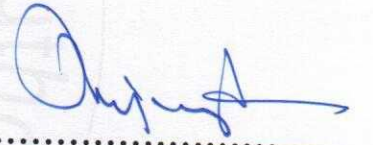
However, receipts of only Rs. 47,214,52.38/- have been submitted by the parties. The amount of Rs. 47,214,52.38/- includes Rs. 5,79,784/- paid for Development charge, Rs. 28,167.41/- for VAT and timely discount amounting to Rs. 1,39,703/- The amounts collected under these heads was payable to the government 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 of Rs. 6,07,951.41/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 6,07,951.41/- 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. 42,72,585.2 (48,80,536.61- 6,07,951.41). Receipts of only Rs. 47,214,52.38 are placed on record by the complainant. Therefore, on the amount of Rs. 1,59,084.23 (48,80,536.61 -47,214,52.38) delay interest will be calculated from the date of statement of accounts that is 22.06.2019 in this case.

9. The respondent has not delivered possession on 12.06.2016 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 42,72,585.2 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 (12.06.2016) till date of passing of this order

(22.09.2021). Such interest works out to Rs. 17,43,050/- 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. 33,360/- to complainant.

10. The Authority further orders that while upfront payment of Rs. 17,43,050/- 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. 33,360/- will commence w.e.f. 23rd October 2021 onwards.

11. 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)