



Complaint no. 1300 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1300 of 2020

Ashish Sharma

....COMPLAINANT(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: 4th

Present: Mr. Kanhaiya Prabhakar, Counsel for the complainant through VC.
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for
respondent in both complaints

ORDER:-

1. In the present complaint, the complainant was allotted unit no. CL2-03-SF having super area of 1487 sq. ft. in the respondent's project Park-81 on 16.03.2010. Builder Buyer Agreement (BBA) was entered between the parties on 09.11.2011 and in terms of the said agreement, respondent was obliged to deliver possession to the complainant latest by 08.05.2015. Complainant had already paid an amount of Rs. 29,57,217.47/- against the basic sale price of Rs.29,83,755/-. It has been stated that area committed in the builder buyer agreement as 1487 sq. ft was increased to 1536 sq

ft. Further it has been alleged that an offer of possession dated 26.10.2020 was sent by the respondent along with demand of Rs. 11,04,022.90 without receiving occupation certificate. Out of said demand, complainant is impugning demand raised on account of additional super area, cost escalation, increase in BSP from Rs. 29,83,755/- to Rs. 31,06,252.82 per sq. ft., club membership charges, electrification charges, GST and EEDC.

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 to revise the final demand with respect to additional super area, Cost escalation, increase in BSP per sq. ft., Club membership charges, Electrification charges, GST and EEDC.

3. The respondent has contested the complaint raising an objection regarding its maintainability because the dispute between the parties, in term of BBA, is referable to an arbitrator. Respondent in his reply has submitted that possession of unit after completing its construction was offered to complainant vide letter dated 26.10.2020. There is no delay on part of respondent as possession timeline is dependent on force majeure clause and timely payment of instalment by the allottees. Regarding issue of increase in area, it has been stated that complainant was well aware of demand of super area and clause 2.15 of BBA be read in consonance with clause 2.3 and 2.4 of BBA Regarding charges of cost escalation, GST, electrification and EEDC charges it has been stated that these have been charged in the terms of provisions of builder buyer

agreement. Respondent has denied the allegation regarding increase in BSP per sq. ft. Regarding club membership charges it is stated that respondent has provided a temporary club in the project and it was agreed between the parties that various facilities would come up in stages. Moreover, a large facility like club is not practically viable in absence of adequate resident base in the project Park 81.

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 **26.10.2020** to the complainant but said offer was not accompanied with occupation certificate issued by

competent authority. No averment with respect to occupation certificate is made by the respondent. 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 **26.10.2020** 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.

(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%).

5. As per the receipts annexed by the complainant in his complaint the amount already paid by the complainant is Rs. 29,57,217.47. The amount of Rs. 29,57,217.47 includes Rs. 2,24,202.44/- paid for EDC/IDC, Rs. 1,32,163/- paid for

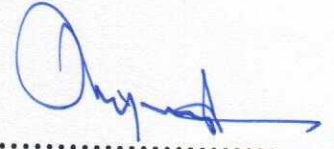


EEDC, Rs. 28,851/- paid for VAT and timely discount amounting to Rs. 1,05,190.03/- . The amount of Rs. 3,85,216.44/- collected under these heads was payable to the government departments and if the respondent had not passed on the same to the concerned departments, he will be liable to pay delay interest 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. 3,85,216.44/- collected by the respondent for payment to the government departments. So, no delay interest on amount of Rs. 3,85,216.44/- 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. 25,72,001.03 (29,57,217.47-3,85,216.44).

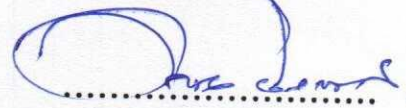
The respondent has not delivered possession on 08.05.2015 which was the deemed date of possession per builder buyer agreement. So, delay interest on the earlier mentioned amount of Rs 25,72,001.03 was calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (08.05.2015) till date of passing of this order (22.09.2021). Such interest works out to Rs 14,06,010/- 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. 19,933/- to complainant.

6. The Authority further orders that while upfront payment of Rs. 14,06,010/- 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. 19,933/- will commence w.e.f. 23rd October 2021 onwards.

7. 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)

