



Complaint no. 736 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 736 OF 2020

Vikas Malhotra

....COMPLAINANT(S)

VERSUS

M/s B.P.T.P Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 14.12.2021

Hearing: 9TH

Present: - Mr. Vishal Singhal, Counsel for the complainant
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

Complainant had booked a unit in respondent's project 'Park Elite Floors' situated in Faridabad on 26.05.2009. Allotment letter for unit no. PC-48-GF having area of 1025 sq ft was issued to him on 06.10.2011. Thereafter, builder buyer agreement was executed between the parties on 13.03.2012 and in terms of clause 5.1 of it, the possession was supposed to be delivered by 13.09.2014(24+6 months). Complainant has already paid Rs 23,82,325/- against basic sale price of Rs 25,69,613/-. Possession of the unit was offered to the complainant on

13.03.2020 alongwith further demand of Rs 4,66,806/-. Said offer was not supported with occupation certificate. In the demand letter charges raised on account of cost escalation, club charges and interest on delayed payments have been impugned. The complainant claims that he did not accept offer of possession due to unjustified demands, non-adjustment of interest payable to complainant on account of delay in handing over of possession and for the want of occupation certificate. Feeling aggrieved, this complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit alongwith delay interest and to also quash unjustified demands.

2. Respondent in their reply have denied the allegations made by complainant and has made following submissions: -

(i). Complainant cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. Both parties are bound by the terms of builder buyer agreement. Complainant has filed this complaint despite as per clause 33 of the agreement dispute involved herein was supposed to be referred to an arbitrator. Further, present complaint involves disputed questions of fact and law requiring detailed examination and cross examination of several independent and expert witnesses and therefore it cannot be decided in a summary manner by this Authority. For these reasons, jurisdiction of this Authority cannot be invoked in this matter by the complainant.



(ii). Complaint is liable to be dismissed in as much as the unit in question is an independent floor being constructed over a plot area tentatively admeasuring 1025 sq ft. As per section 3 (2) (a) of RERA Act,2016 registration is not required for an proposed to be developed that does not exceed 500 sq meters.

(iii). Regarding delay caused in offering possession of the allotted unit it has been stated that delay has been occasioned due to inaction of the government or its agencies , hence, it should be inferred that any delay has been unfortunately caused due to force majeure circumstances beyond control of the developer. Further, it has been stated that the booking of the unit was accepted by the respondent on the basis of self certification policy issued by DTCP, Haryana. In terms of said policy any person could construct building in licensed colony by applying for approval of building plans to the Director or officers of department delegated with the powers for approval of building plans and in case of non-receipt of any objection within the situated time , the construction could be started. Respondent applied for approval of building plans but they were withheld by the DTCP despite the fact that these building plans were well within the ambit of building norms and policies. Since there was no clarity in this policy to effect that whether the same is applicable to individual plot owners only and excludes the developers/colonizers the department vide notice dated 08.01.2014 granted 90 days time to submit requests for regularization of construction. Thereafter vide order dated 08.07.2015 DTCP clarified that self certification policy shall also



apply to cases of approval of building plans submitted by colonizer/developer but did not formally released all the plans already submitted by respondent.

(iv). Complainant has concealed the fact that respondent had given additional incentive in the form of timely payment discount amounting to Rs 76,257/- to the complainant.

(v). After completing construction work of the unit, offer of possession was made to complainant on 13.03.2020 alongwith demands on account of various charges which were duly agreed between the parties as per terms of BBA. All these charges demanded by respondent are in consonance with the terms of BBA. It is the complainant who is at fault by not coming forward to take possession of the unit after paying due amount as demanded alongwith offer of possession. Several reminder dated 16.04.2020 , 28.05.2020 and 29.06.2020 was also issued to complainant for making payment and taking over of possession but complainant did not approached the respondent.

(vi) It has been stated that loyalty bonus of Rs 51,373/- was also offered to the complainant alongwith offer of possession by the respondent as a gesture of goodwill.

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

(i) Maintainability of complaint

The respondent's argument that first the matter should be referred to an Arbitrator, or that questions in dispute are a mixed questions of facts and law therefore the same cannot be tried by this Authority and that the Authority is not having jurisdiction to entertain such complaints because builder buyer agreement was executed much prior to coming into force of RERA Act,2016, holds no ground in the face of the provision of Section 79, Section 80 and Section 89 of the Act by virtue of which all disputes relating to the real estate projects falls within the purview of the RERA Act and can be adjudicated upon by RERA after coming into force of the Act. The jurisdiction of Civil Courts has been specifically barred to entertain any such complaint in the matter. While RERA Act will not adversely affect lawfully executed agreements between the parties prior to its coming into force in terms of the principles laid down by this Authority in complaint no. 113/2018 Madhu Sareen vs BPTP and complaint no. 49/2018 Prakash Chand Arohi vs Pivotal Infrastructure Pvt Ltd, but after its enactment all disputes arising out of those agreements can be settled only by the Authority and jurisdiction of civil Court stands specifically barred in terms of section 79 of the Act. For this reason, challenge to the jurisdiction of the Authority cannot be sustained.

Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floors being constructed on the plots measuring 500 Sq. Mtrs., it is observed that the

respondent is developing a larger colony over the several acres of land. One portion of the project is floors on small size of plots, 3 to 4 flats are being constructed on each floor and the same are being sold to different individuals. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that since the plot does not exceeds 500 Sq. Mtrs, the jurisdiction of this Authority is untenable. The provisions of Section 3(a) are applicable, if the total project area is assessed less than 500 Sq, Mtrs. If such area in the larger colony in fact run into several acres, the arguments of the respondents in this regard is hereby rejected.

(ii) Offer of possession

Admittedly, the respondent had sent an offer of possession to complainant on 13.03.2020 alongwith additional demand of Rs 4,66,806/-. Ld. counsel for respondent has stated that occupation certificate was applied prior to offer of possession and stands received on 25.03.2021. At this stage, ld. counsel for complainant has argued that offer of possession dated 13.03.2020 was not a valid offer of possession as it was not supported with occupation certificate and after receiving of occupation certificate the respondent has not made any offer till date. Rebutting it, ld. counsel for respondent argued that occupation certificate was applied prior to said offer and in between nationwide lockdown was imposed due



to pandemic COVID-19 which halted departmental works so the whole fault is not of developer also. He has prayed for exempting the time period of lockdown towards gap of offer of possession and grant of occupation certificate in order to consider offer of possession valid with effect from 25.03.2021.

After hearing submissions of both parties, the Authority is of view that respondent was duty bound to deliver possession latest by 13.09.2014. He has rather offered possession after delay of 6 years approximately on 13.03.2020 alongwith demand of Rs 4,66,806/- without receiving occupation certificate. However, respondent has already applied for occupation certificate prior to said offer and received it on 25.03.2021 i.e after gap of 1 year approximately and as per version of respondent, said gap was due to imposition of nationwide lockdown in view of COVID-19 pandemic. The Authority has no hesitation in accepting the occupation certificate dated 25.03.2021 granted by concerned department because COVID-19 pandemic has affected the whole nation and in order to curb it, various restrictions including lockdown for around 6 months were imposed and as such even after lifting of lockdown and restriction, the works of govt department got impaired as physical presence of officials in govt department was not allowed. So, the plea of respondent is reasonable and holds strength. For these reasons , it is decided that the offer of possession can be deemed valid with effect from date of receiving of occupation certificate and accordingly, the complainant is entitled to delay interest for the delay caused in offering



possession for the period ranging from deemed date of possession till date of occupation certificate in terms of Rule 15 of HRERA Rules, 2017 i.e. 9.30%.

(iii) Delay interest

In furtherance of above mentioned observations, it is decided that payment of delay interest amounting to Rs 11,92,280/- calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 13.09.2014 (deemed date of possession) to 25.03.2021 (date of occupation certificate) is awarded to the complainant. The Authority further orders that respondent will send a fresh statement of accounts of receivables and payables incorporating therein amount of delay interest.

(iv) Disputed demands

As regards the impugned demands in respect of cost escalation, club charges and interest on delayed payments the Authority directs the respondent to review these demands in consonance with the principles already laid for assessment of these demands in complaint no. 113/2018 titled as Madhu Sareen vs BPTP Pvt Ltd decided on 16.07.2018. The respondent shall therefore calculate the amount of above mentioned demands in consonance with the principles of Madhu Sareen's case and sent the same to complainant within 45 days of uploading of this order. In order to maintain parity between the parties, it is clarified that in case, payment of instalment have been delayed by the complainant, then for said delay,

respondent may recover interest at the same rate of interest as provided in Rule 15 of HRERA Rules, 2017 i.e. 9.30%.

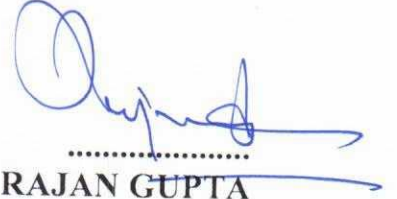
While preparing the statement of receivables and payables the respondent shall adjust the amount of Rs 11,92,280/- assessed by this Authority as amount of delay interest payable to complainant. The complainant is also directed to take possession after paying the balance dues if any within 45 days of receipt of revised demand letter.

4. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 21,10,356/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 2,50,383/- and Rs 21,586/- paid on account of VAT from total paid amount of 23,82,325/-. The amount of such taxes is not payable to the builder and are rather required to be passed on by the builder to the concerned revenue department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable only to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.



5. Respondent is directed to send fresh statement of accounts in terms of principles incorporated in above paragraphs within 45 days of uploading of this order. Complainant is also directed to take possession of unit within 45 days of receipt of fresh statement of accounts.

6. **Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

