



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 861 OF 2019

Rajesh Jain HUF

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.12.2021

Hearing: 18th

Present: Shri Abhay Jain, learned counsel for the Complainant.

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

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. In this complaint filed on 10.04.2019, notice was issued on 11.04.2019 and was successfully delivered on 15.04.2019. Last date for filing reply was 14.05.2019. Reply was filed by respondent on 29.08.2019. In this complaint, complainant has sought relief of granting rightful and legitimate

possession along with delay interest, and to cancel unlawful demand for payments made by respondent. Today is 19th hearing of this case. Several substantial issues in this case had been discussed in order dated 28.01.2021 and 18.08.2021.

2. Facts as stated by complainant are as follows:

(i) Complainant's is a subsequent allottee. Plot buyer agreement was executed between the original allottee Mr. Ravinder Singh Chauhan and respondent for plot no. 12A, Block Y, Phase III measuring 502 square yards in respondent's project Parklands on 09.08.2008. As per said agreement basic sales price of the plot was Rs. 36,39,500/- and deemed date of possession was 24 months from sanction of service plans of the colony.

(ii) Possession of the plot was offered to complainant on 13.10.2008 (Annexure-2), however original allottee had not accepted the said offer. Later, complainant purchased the plot from original allottee and an endorsement letter was issued by respondent in his favor on 28.06.2011 (Annexure-3). Respondent has acknowledged in the nomination letter dated 28.06.2011 attached at page 64 of the complaint that respondent had received an amount of Rs. 47,55,888/- up to 16.06.2011 from the original allottee.



(ii) On 20.03.2012, complainant received a letter from respondent informing him about enhancement of external development charges from Rs. 1024/- per sq. yd to Rs. 2400/- per sq. yds. Accordingly vide letter dated 20.03.2012 respondent demanded additional amount of Rs. 16,57,942/- on account of enhanced EDC along with several other charges. Complainant alleges that these charges are illegal and could not have been demanded.

(iii) Thereafter, complainant inspected his plot and found that plot was located on disputed land and the road leading to his plot was property of some other person. Further, no information in respect of completion certificate was given by the respondent. It is alleged by complainant that his plot was neither accessible nor in usable condition, because there was no proper way to reach the plot. Further, basic amenities like water, sewage and electricity, non-completion of parks and other common area facilities had not been provided.

(iv) Complainant alleges that respondent has further demanded an amount of Rs. 1,77,163/- towards maintenance charges. Respondent had also sent a legal notice dated 29.08.2018 for payment of said maintenance charges to the complainant.

Feeling aggrieved by above facts and circumstances, this complaint has been filed by complainant seeking issuance of directions to the respondent to



deliver rightful and legitimate possession of plot along with delay interest and to cancel/ revoke unlawful demands, and further to develop common area facilities like water supply, roads, street lights, parks, community center, club, schools, hospitals and sewer etc. for making the plot properly habitable and usable.

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

(i) Complainant cannot seek relief qua the agreement that was executed prior to coming into force of RERA Act. Both parties are bound by terms of builder buyer agreement. Complainant has filed this complaint despite the fact that as per clause 43 of agreement dispute involved herein should have been referred to an arbitrator. For these reasons, jurisdiction of this Authority cannot be invoked by the complainant.

(ii) Payment of Rs. 47,55,888 has been denied by the respondent. They also deny that any offer of possession was made in the year 2008. Respondent had offered possession of the plot to complainant on 19.03.2012 after receipt of part completion certificate dated 09.09.2010. Since complainant failed to make due payment in respect of the plot, allotment of the plot was terminated on 19.11.2018. Regarding delay caused in offering possession of allotted plot, it has been stated that delay has been unfortunately caused due to force majeure



circumstances beyond control of the developer. Further complainant himself has throughout been in default in making payments of due instalments therefore timelines for possession stood diluted.

(iii) Basic infrastructure like sewer, storm, water supply stands laid and street light poles have been duly erected. The demands for additional payment were made as per provisions of plot buyer agreement duly signed by both parties. Further, maintenance invoice was raised in accordance with clause 14 of Plot buyer agreement. Respondent has vehemently denied that the plot was situated on disputed land or it was not accessible and in usable condition.

3. Arguments of both the parties have been heard in detail. During the previous dates both parties were asked to submit written arguments. They had submitted. Sh. Abhay Jain, learned counsel for complainant argued that alleged offer letter dated 19.03.2012 cannot be termed as offer of possession because as on that date the colony had not received occupation certificate. He argued that the colony is still is not in usable condition. Sh. Jain placed some photographs before the Authority in support of his arguments that neither there are electric poles nor appropriate road etc. constructed. He further argued that his plot is located on a 24-meter road and a narrow strip of land forming part of 24-meter road, situated just outside of his plot was not in ownership or possession of

respondent when the respondent had obtained part completion certificate of the colony on 09.09.2010. He stated that the said piece of land came into ownership of respondent-company in the year 2015, therefore, neither alleged offer of possession nor part completion certificate obtained by respondent in respect of his plot is lawfully correct. In support of his arguments complainant has submitted copies of certain land records to suggest that the said strip of land outside his plot came into the ownership and possession of respondent company in the year 2015. Learned counsel Sh. Jain argued that he could not have accessed his plot from the 24-meter road because of the disputed land falling in-between his plot and 24-meter road. He could not have approached his plot from the land belonging to some other person.

4. For the foregoing reasons, learned counsel Sh. Jain argued that the alleged offer of possession dated 19.3.2012 cannot be termed as a lawful offer. Since, no offer had been made thereafter, it should be concluded that the respondents are yet to give him an offer. Since an offer of possession is yet to be made, complainant is entitled to delay interest for the entire period from due date of possession till such time as a rightful and lawful possession is made.

5. Further, in support of his arguments that respondents did not own the strip of land in front of his plot the complainant submitted a copy of revised layout plan approved by Town and Country Planning Department dated 28.4.2011 vide

A handwritten signature in blue ink is located at the bottom right of the page. Below the signature, there is a horizontal line with an arrow pointing to the left.

which additional layout plan was approved in respect of full colony to be developed on 339.682 acres land. He stated that the newly added area in the earlier layout plan was comprised of 6 pockets and one of the pockets was above referred strip of land situated in front of plot of the complainant. Learned counsel Shri Jain's argument is that when the layout plan of disputed land in front of complainant's plot was approved in the year 2011, how could respondents claim that their plot had received part completion certificate in September, 2010. Sh. Jain argued that because of this dispute relating to the strip of land, the plot of complainant cannot be considered having received part completion certificate, therefore, the offer of possession made to them in March 2012 was without part completion certificate, therefore, same deserves to be disregarded.

6. Sh. Jain, learned counsel for complainant further argued that alleged offer of possession dated 19.03.2012 was accompanied with a demand letter of highly unreasonable demands. Against the basic sale price of about Rs. 36,39,500/- they have already made payment of Rs.47,55,888/- and on top of it, respondents were further demanding an amount of Rs. 16,57,942/-. Accordingly, against the basic sale price of Rs. 36,39,500/- respondents had demanded Rs. 64,13,830/-. The respondents' demands were highly unreasonable and whimsical. Therefore, for this reason also, the complainant could not have taken the possession.



Therefore, alleged offer of possession should not be taken into account at all and respondents should be asked to make a fresh offer accompanied with a proper and lawful statement of accounts incorporating therein the interest payable on account of delay having been caused from the deemed date of offer till lawful offer is made.

7. Shri Hemant Saini, Ld. Counsel for respondent agued as follows:

(i) The respondent company is developing this project comprised of 339.682 acres land. Several licenses No. 12102, 1261 of 2006, license No. 24 of 2009, license No. 39 and 58 of 2011 were obtained by the respondents. The land measuring 55 kanals 7 marlas which also includes 24-meter road abutting the plot of the complainant was purchased in the year 2007 from Rajvir son of Sh. Mukhtiar Singh. A copy of the 'Ikraarnama' has been annexed with the written arguments. The license in respect of this land was received on 28.4.2011 and the layout plan of this additional area measuring 54 kanals 8 marlas and the area falling in all the previous licenses, was also approved on 28.4.2011.

(ii) The respondents admit that a dispute was going on with landowners which was resolved in 2015, but such a dispute did not affect layout plan of the colony or rights of the respondents or access to the plot of complainant and other similarly situated allottees. The respondents got layout plan of the colony duly



approved in April, 2011 and all services etc. had been laid prior to that. It was argued by learned counsel Sh. Hemant Saini that for having laid all services properly, right of usage of plot by the complainant was not affected at all. The land in dispute with some landowners was internal matter of the group companies. The land was always in their possession and had been properly developed. Nobody ever denied possession or right to access the plot to the complainant. The complainant themselves did not come forward to pay additional amount demanded from them and now to cover up their own fault they are approaching this Authority with the argument that lawful offer of possession has not been made. The Ld. Counsel Sh. Saini further argued that when offer of possession was made to the complainant in March, 2012, the colony was fully developed, revised layout plan had been approved and so-called disputed piece of land was duly licensed and there was no hindrance at all in the way of complainant from using the plot. Sh. Saini, further argued that eventually complainant was offered possession in March, 2012 and argued that it is the complainant who is at fault in not accepting the possession and also not making balance payments, consequently respondents had validly cancelled his allotment in the year 2018.

8. The Authority has gone into written submissions as well as oral submissions of the parties and has also perused documents placed on record. For



verifying that the plot of the complainant actually got Part completion certificate on 09.09.2010, layout plan pertaining to the Part completion certificate dated 09.09.2010 was called for from the department of Town and Country Planning. Said plan has been perused and taken on record. Now, the Authority observes and orders as follows: -

- i) Most contentious issue in this plaint is that according to complainant, offer of possession made in March 2012 was not a proper offer of possession because it was supposed to have been offered after receiving part completion certificate in the year 2010; whereas, a piece of land in front of the plot of the complainant was licenced in the year 2011 and a land in dispute going on relating to it was decided in the year 2015. According to the complainant, if the licence was granted in the year 2011, the claimed part completion certificate of September, 2010 cannot be accepted as correct in respect of his plot. Further, when the dispute relating to land was settled in 2015, offer of possession in the year 2012 cannot be accepted as correct.
- ii) Authority observes that sequences of events in the matter is that respondents had obtained series of licences for development of this colony over land measuring 339.682 acres. They acquired the lands



through several sister concerns. They executed large number of collaboration agreements with individual landowners. The bottom line of the matter, however, is that on 9.9.2010 a partial completion certificate was issued by Town & Country Planning Department in respect of 154.30 acres land out of their colony comprised of 279.95 acres.

- iii) Further, additional licences were obtained on subsequent dates and finally a revised layout plan was approved by the Town & Country Planning Department in respect of 339.682-acre land on 28.4.2011. In the plan for which partial completion certificate was granted in September, 2010, 24-meter road in-front of the plot of complainant has been shown to have been constructed by the Town and Country Planning Department.
- iv) Further fact of the matter is that disputed land in front of the plot of complainant was purchased by respondents in the year 2007 which under some circumstances went into dispute in the year 2011. Regardless of the dispute going on, Town & Country Planning Department granted licence No. 39 dated 28.4.2011 for 32.944 acres land which included the disputed land located in front of plot of the complainant. It is reiterated that licence No. 39 of 28.4.2011



was received by the respondent-company being a promoter but the licence was actually granted to 20 individual landowners which included Sh. Rajvir son of Sh. Mukhtiar Singh shown at Sr. No.19 of the said licence dated 28.4.2011. A presumption of truth is attached to the licence granted by Town & Country Planning Department. Such a licence could have been granted only with the due consent of all the landowners which included landowner Sh. Rajvir Singh son of Sh. Mukhtiar Singh who owned the disputed land situated in front of plot of the complainant.

- v) Unmistakable conclusion however is that the disputed land was licenced on 28.4.2011 in respect of which revised layout plan was approved on the same date. Thus, full 24-meter road got confirmed only by virtue of licence and the revised layout plan dated 28.04.2011.
- vi) Case of the complainant is that when a licence was granted on 28.4.2011, the offer of possession for the same could not be based on the part completion certificate issued in September 2010. Since no part completion certificate had been issued in respect of disputed land, the part completion certificate issued in the year 2010 should not be considered valid in the case of complainant's



plot. Therefore, a fresh offer of possession should be made after obtaining a fresh part completion certificate.

- vii) The case of the respondent, however, is that at the time of receipt of part completion certificate in September, 2010, entire land of 24-meter road was in possession of the respondent by virtue of Ikraarnama of year 2007. The part completion certificate and approved layout plan annexed therewith shows that the 24 meters road was in existence, therefore offer of possession of March 2012 made to the complainant was absolutely valid. Entire colony was properly licenced. Revised layout plans of the colony have been approved. Services of the colony including construction of 24-meter road had been laid out. The internal dispute between landowning company and the landowners also got resolved and it did not affect rights of the complainant in any manner.
- viii) On evaluation of the above facts, Authority is of the view that when the offer of possession was made in March, 2012, the colony, including plot of the complainant was duly licensed and there was a 24-meter road in front of the plot. Revised plan has been properly made and approved by competent authorities. Nothing has been placed on record by the complainant to show that they faced any



hindrance in access to the plot after receiving offer of possession. The complainant is relying on indirect evidence that if a land dispute was going on pertaining to a strip of land in-front of his plot, which admittedly got resolved in the year 2015, how respondent could have made a valid offer of possession. The complainant, however, has not placed on record any documentary evidence or email, or any written letter stating that due to said dispute he was not able to access his plot. It appears that complainant is trying to make use of the later day events in support of his position.

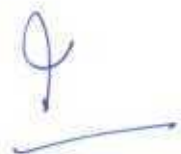
- ix) Vide settlement deed dated 19.10.2015, Transfer of ownership in favor of possession of respondent-company over the disputed piece of land has been admitted. In the absence of any evidence to the contrary placed on record, it is assumed that when part completion certificate in September 2010 or revised layout plan of April, 2011 were approved, the respondents had come in possession of the disputed piece of land by virtue of the Ikraarnama of 2007 and Collaboration agreement of April 2011. It is observed that many a times while transfer of ownership take its own time, Possession is exchanged. Such exchange of possession as well as intent of the



landowner to transfer ownership is adequately proved by the collaboration agreement and approval of revised layout plan in April, 2011. There appears to be no intent on the part of landowner to deny transfer of land or its possession to the respondent-company. The Authority therefore comes to a conclusion that when an offer of possession was made in March, 2012, the colony had been developed as per revised layout plans and complainant could have taken possession of his plot if he so desired. Accordingly, the offer of possession made in March 2012 was not a defective offer of possession on account of dispute relating to strip of the land in question.

- x) Now, the Authority will examine whether offer of possession of March 2012 could be challenged by complainant on account of wrongful demands made by respondent-company. The Authority had examined this issue in its 11th hearing dated 28.1.2021. Operative part of this order is reproduced below: -

(i) Basic sales price- As per statement submitted by the complainant and statement of accounts dated 19.03.2012 annexed at page 75 of the reply submitted by respondent, basic sales price



of the plot is Rs. 36,39,500/-. This amount is payable by the complainant to the respondent promoter. He agreed for the same.

(ii) External development charges- External development charges of Rs. 5,14,048/- mentioned in the statement of accounts dated 19.03.2012 are payable by the complainant which is statutory development charges to be paid to the Govt. in the department of Town and Country planning by the respondent promoter.

(iii) Enhanced external development charges- Issue regarding EEDC was decided by the Authority vide order dated 25.02.2020. The operative part is being reproduced as follows:

"The Authority observes that with regard to EEDC, the matter is sub judice with the Hon'ble Punjab and Haryana High Court so the demand of EEDC is hereby quashed. If the Hon'ble High Court declares it as payable in future then the allottee will deposit the same proportionately"

Therefore, at present this amount is not to be paid by the complainant rather he has to undertake as and when department succeeds in court case then he shall pay the same to the respondent promoter and promoter will deposit the same in the Govt. department.



(iv) Infrastructure development charges- IDC amounting to Rs. 2,23,390/- have been charged by the respondent being a statutory charge being levied by the Govt. and admitted by the complainant in his statement of accounts. These charges are also payable.

(v) Preferential location charges- This issue has also been decided by the Authority vide order dated 25.02.2020. The operative part is being reproduced as follows:

"With regard to PLC, this Authority accepts the plea taken by the complainant that only 5 % of basic sales price is payable as the plot is neither park facing nor a corner one."

Complainant has submitted in his statements that Rs. 1,81,975/- is payable by him against this component which is correct as per the aforesaid observation made by the Authority. This amount is payable by the complainant.

(vi) Club Membership charges- An amount of Rs. 75,000/- has been demanded against CMC. Said amount is admitted by the complainant in his statements and thus becomes payable by the complainant.

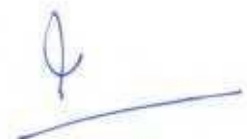
(vii) Electrification and STP charges- The complainant has not mentioned this head in his statements. As per statement of



respondent, the amount payable under this head is Rs 4,99,490/- Authority vide order dated 25.02.2020 had decided that such charges shall be regulated as per the provisions of the Agreement executed between complainant and respondent promoter. Whatever amount written in the agreement shall be payable and if anything is not mentioned in the agreement it shall not be payable. Clause 2.5(a) of the agreement dated 09.08.2008 only mentions that the electrification charges shall be payable. Respondent is directed to specify separately the amount which has been charged for electrification and amount charged for STP. How they can charge for STP since it's part of essential services to be provided by the respondent promoter to his allottees.

(viii) Utility connection charges- An amount of Rs. 15000/- is shown as payable in the statement of accounts dated 19.03.2012. This amount is admitted by the complainant as payable to the respondent.

(ix) Interest bearing maintenance charges- An amount of Rs. 1,00,400/- is admitted to be payable by the complainant but no such head is mentioned in the statement of accounts of the respondent. Both the parties are directed to explain as to how this



amount has been charged by the respondent and admitted by the complainant.

(x) Stamp duty charges- As per statement of accounts dated 19.03.2012, an amount of Rs, 3,77,000/- is shown against this head. Learned counsel for the complainant submits that complainant is ready to purchase the stamp paper himself. Authority allows the complainant to do so and therefore these charges shall not be payable by the complainant to the respondent.

(xi) Conveyance deed registration charges- Learned counsel for the complainant orally submits that he is ready to pay these charges. So, the amount of Rs. 15,200/- shall become payable by the complainant.

Accordingly, the demands raised on account of enhanced EDC Rs. 6,90,752/-; 50% of demanded preferential location charges Rs. 363950/- which comes out to Rs. 1,81,975/-; and part of electricity and other development charges Rs. 4,99,490/- are not payable by the complainant. Accordingly, out of total demand clearly an amount of Rs. 8,72,727/- (6,90,752+ 1,81,975) is not payable by the complainant. Similarly, only a part amount of electricity etc. is payable for which the respondents will give a detailed justification. The Authority further observes that when statement of accounts of March, 2012



was issued, the EEDC charges then payable were later on stayed by Hon'ble High Court in 2013. Accordingly, these charges though not payable, but the offer of possession cannot be called bad in the eyes of law for on these charges. Accordingly, these amounts shall be reduced from the demand raised by the respondents.

xi) The last question is regarding interest payable for having delayed the offer of possession. Plot buyer agreement was made for the sale of plot on 9.8.2008. Offer of possession should have been made within 24 months of execution of this agreement, which works out to 8.8.2010. Offer, however, was made in March, 2012, thus causing delay of approx. 1 years and 7 months. The complainant is entitled to receive interest for this period at the rate Rule 15 i.e., MCLR +2% on the entire payment made prior to the deemed date of offer of possession. This amount works out to Rs. 5,87,793/-.

xii) Now, the last question is how the period between 2012 and 2019 is to be treated when this complaint was filed before this Authority is to be treated. Nothing has been put on record to show as to why complainant chose not to agitate his right before any court of law. Once, learned counsel for the complainant verbally had argued that

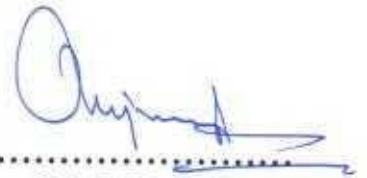


they had approached Ld. Consumer Commission, but nothing has been stated in this regard in writing or any document in support of their contention placed on record. Authority cannot consider this averment merely on verbal reference made in this regard. The respondent on the other hand by raising excessive demands and also unjustifiably cancelling the allotment in the year 2018 acted in a high-handed manner. Accordingly, Authority decides to balance equities in this matter and order that the period from March 2012 till now shall be treated as zero period i.e., neither complainant will be entitled to get delay interest for this period nor the respondents can claim holding maintenance charges as interest on balance due amount. In any case, photographs presented by complainant exhibits that the colony lacks proper maintenance. For this reason, also no maintenance charges will be applicable, accordingly, maintenance charges of Rs. 1,77,163/- demanded by respondents are hereby quashed. Maintenance charges shall be applicable after handing over of possession of plot to complainant. Respondents shall send a fresh offer to the complainant along with revised demands in accordance with this order. Complainant shall accept the offer within 30 days of its receipt. Also, accounts between the



parties will be settled as per statement of accounts to be issued by respondents then they will be at liberty to approach this Authority again for that purpose only.

Disposed of in these terms. File be consigned to record room after uploading the orders on the website of the Authority.



.....
RAJAN GUPTA
(CHAIRMAN)



.....
DILBAG SINGH SIHAG
(MEMBER)

