

**HARYANA REAL ESTATE REGULATORY AUTHORITY,  
PANCHKULA.**

**Complaint. No. 698/2018-** Satyapal Mehndiratta & Manju Kumari  
.....Complainants

Versus

B.M. Gupta Developers Pvt. Ltd.

.....Respondent

**Date of Hearing: 27.02.2019**

**Coram: -** Shri Rajan Gupta, Chairman.  
Shri Anil Kumar Panwar, Member.  
Shri Dilbag Singh Sihag, Member.

**Appearance: -** Shri Himanshu Raj, Counsel for Complainants  
Shri Ajay Chikara, Counsel for respondent

**ORDER:**

1. The complainants had purchased a flat in respondent's project named Elegant Heights situated in Sector 26, Rewari. Buyers' agreement was executed in their favour on 24.12.2013 and they have already paid Rs. 45,16,189/- against basic sale consideration of Rs. 43,94,571/-. Time allowed to the respondent for delivery was 36 months plus 90 days grace period which has already lapsed on 24.03.17. According to the complainants, the respondent in response to a communication, had expressed his inability to hand over possession of the purchased unit and offered them an alternative flat in another Tower. However, none of the towers are presently ready for possession and therefore, the



complainants have filed this complaint seeking directions against the respondent for delivery of possession and payment of compensation.

2. The respondent has precisely resisted the complaint averring that he has already offered fit out possession of the alternative flat to the complainants and since the latter have not accepted the same, their complaint is not maintainable.
3. After hearing the parties and going through the record, the Authority observes that an alternate flat offered to the complainants was of bigger size and was having a higher value. So, the complainants were not obliged to accept the offer unless the price of offered flat is equal to the one which they had agreed to purchase in terms of the buyers' agreement. Mere fact that the complainants have rejected the offer thus does not render their complaint non-maintainable.

The complainants herein are not seeking refund and their prayer is rather for delivering them possession of the purchased unit. During the course of arguments, the respondent has agreed to offer the possession of the booked flat to the complainants within six months. In view of such undertaking, the present complaint deserves to be disposed of with the direction that respondent shall offer possession of the booked flat to the complainants within six months and they shall also supply a detailed statement in respect of payable and receivable amount to the complainants along with letter of possession. Since the agreed time for delivery of possession in terms of buyers' agreement had lapsed on 24.03.17, the respondent shall adjust in the said statement, the amount of delay compensation which shall be equivalent to the interest calculated on the already



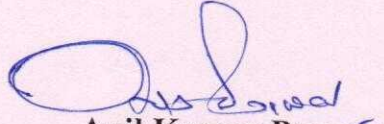


paid amount at the rate prescribed in Rule 15 of the HRERA rules, 2017. Such interest shall be calculated from the deemed date i.e. 24.03.17 to the actual date of possession.

The complaint is **disposed of** in the above terms. Files be consigned to the record room and order be uploaded on the website.



**Dilbag Singh Sihag**  
Member



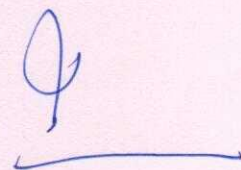
**Anil Kumar Panwar**  
Member

**Rajan Gupta**  
Chairman



I agree with the conclusions arrived at by my learned colleagues, Hon'ble Members of the Authority, to the extent that respondent shall offer possession of the booked flats to the complainants within six months and they shall also supply a detailed statement of accounts in respect of the total receive-able amounts to the complainants along with the letter of possession.

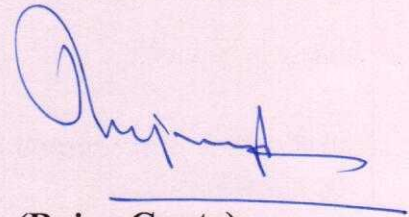
I, however, do not agree with the order relating to the quantum of compensation to be paid for the delayed delivery of possession. Admittedly, the possession was to be offered by 24.3.2017. If it is delivered within next six months i.e. by 30<sup>th</sup> September, 2019, it will be with a delay of two and a half years. In a dissenting judgement in **complaint case No.49 of 2018-Parkash Chand Arohi versus Pivotal Infrastructures Pvt. Ltd.**, I had expressed my views that in real estate projects some amount of delay is expected because of the very nature of the projects. For a reasonable period of delay in offering possession, the compensation shall be determined in accordance with the terms of the agreement. However, in case the agreement is silent about it, then the compensation shall be determined at the rate of reasonable interest. The reasonable interest for delayed payments by the allottees to the developer has been determined at the rate of 9%, therefore, the same rate shall be applicable for determining the compensation on account of delayed delivery of possession beyond the agreed date if the agreement is silent in this regard.





In the instant case, clause 26.3 (a) of the agreement provides that in the event of delay in offering possession to the allottees shall be compensated at the rate Rs.5/- per sq. ft. per month of the super area. Since there is a specific stipulation in the agreement between the parties now that stipulation only will guide the quantum of compensation to be paid by the promoters to the allottees. The agreements made between the parties prior to coming into force of RERA Act, 2016 though can be interpreted reasonably, but it cannot be given a complete go-bye. Accordingly, I order that the delay of two and a half years being reasonable, the compensation for delayed delivery of apartment shall be calculated as provided for in the said clause 26.3(a) of the agreement.

I order accordingly.



**(Rajan Gupta)**  
**Chairman**