

**HARYANA REAL ESTATE REGULATORY AUTHORITY  
PANCHKULA**

**Complaint No. : 422/2018  
Date of hearing : 14.03.2019  
Hearing : 4<sup>th</sup>**

PRAVEEN YADAV

.... Complainant

Versus

M/S BPTP LTD

.... Respondent

**CORAM :**

Sh. Rajan Gupta, Chairman  
Sh. Anil Kumar Panwar, Member  
Sh. Dilbag Singh Sihag, Member

**APPEARANCE:**

Sh. Yadvendra Yadav, on behalf of complainant  
Sh. Hemant Saini, counsel for respondent

**ORDER:**

1. All the issues involved in the above captioned complaint have already been decided by this Authority vide its order dated 08.01.2019 and the said order is reproduced as under :

“The matter was earlier taken up on 27.11.2018 when the respondent had filed his reply. The respondent has incurred a cost of Rs. 56,000/- on account of non-filing of reply within prescribed time. Today the matter was

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heard and decided after going through the oral as well as written pleadings of both the parties.

2. The case of the complainants is that they booked an independent floor No. PB-215-GF measuring 1365 sq. ft., in the project named "Parkland Pride Floors" of the respondent in district Faridabad. They paid Rs.4,10,300/- as booking amount on 13.06.2011. They were issued an allotment letter dated 25.11.2011. Floor Buyer Agreement (hereinafter referred to as FBA) was executed between parties on 18.06.2013. Payments were to be made under the Construction linked payment plan. As per clause 5.1 of the Agreement, delivery of the unit was to be made within 30 months from the date of execution of FBA, with additional 180 days as grace period. Thus the deemed date of delivery was 18.06.2016.

The complainants have paid about Rs. 47 lakhs against the Basic Sale Price of Rs.51,55,005/- till 02.04.2013 and Rs.50,11,977/- till 22.07.2017.





The grouse of the complainants is that despite several visits to the office, the respondent has failed to give any satisfactory information about the delivery of the unit and exact status of the project. The respondent informed the complainants vide email dated 28.10.2016, that construction work has resumed at the site and delivery will be made soon.

Their another grouse is that the respondent has charged excessive interest @ 18 percent on delayed payment of instalment, amounting to Rs. 82,000/-. The complainants also state that at the time of booking, the respondent had promised a deluxe unit, well equipped with state of art facilities/amenities but the same do not exist anywhere in the project . Further, the respondent has made an offer of possession vide letter dated 19.07.2018 accompanied with a Final Statement of Accounts. The complainants are aggrieved on account of demand of Rs.11,82,088/- excluding the stamp duty raised by the respondent through the offer letter. Another grouse of the complainants is that the

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respondent has wrongfully imposed the cost of escalation of prices on them. They have also stated that the respondent cannot be allowed to take the plea of "Force Majeure" for the delay wholly attributable to the respondent.

The complainants vide email dated 29.07.2018 sought certain clarifications regarding various charges imposed on them including escalation cost, but the respondent has failed to give reply to their email as well as subsequent reminders till date. The complainants received telephonic calls on 09.08.2018 and 13.08.2018 from the office of the respondent, offering them a discount of Rs. 60 per sq. ft. The complainants informed the respondent that they are willing to make balance payment only if the respondent was ready to redress their grievances regarding illegal charges imposed on them as per the Final statement of accounts, to which the respondent has not replied till date. The complainants are aggrieved by the fact that despite payment of more than 90% of the total sale

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consideration, the respondent has failed to deliver the possession of the floor by the due date of delivery as per FBA.

Now the complainants have filed the present complaint before this Authority seeking refund of Rs.50,11,977/- along with interest @ 18 % interest p.a. They are also seeking waiver of escalation cost and GST (Rs4,53,641/- & Rs.1,66,872/- respectively) imposed on them.

3. The respondent has denied all the allegations and raised several preliminary objections, as follows:

- i) The provisions of Real Estate (Regulation and Development) Act, 2016 are not applicable to the present matter because the agreement was executed between the parties prior to the coming into force of the Act, hence the agreements entered into between the parties shall be binding on the parties and cannot be reopened.
- ii) Further, the present complaint is not maintainable as the floor of the complainants is less than 500 sq. mts





thus registration is not required as per section 3(2) (a) of RERA Act, 2016. Even as per Guidelines for Registration of Independent floors for the Residential Plots of Licenced Colonies, issued by financial Commissioner & Principal Secretary to Govt. Haryana Town & Country Planning Department dated 27.03.2007, registration of independent floors can be allowed in case of residential plots of sizes 180 sq yards or above and each such dwelling unit shall be designated as 'Independent Floor' which shall be recognized as a distinct, identifiable property with a separate identification number.

- iii) The respondent has also challenged the maintainability of this complaint on the ground that the parties are bound to refer the matter for arbitration under clause 33 of the Flat Buyer Agreement, in case of failure to reach any amicable settlement amongst them, but in utter breach of the Agreement the complainants have directly filed the present complaint without even making any effort to settle the matter amicably.





- iv) The respondent also states that all the actions taken and demand raised by the respondent are in accordance with the Flat Buyers Agreement. The respondent has further denied the applicability of Rule 8 on him since the present agreement was executed between complainants and respondent prior to the enactment of RERA Act and the promoter had already collected the amount in excess of 10 percent of the total price.
- v) Respondent states that the complainants are guilty of concealing from the Authority the goodwill gestures made by the respondent like grant of 'Timely Payment discount" of Rs.1,52,076/- to the complainants.
- vi) The respondent has tried to explain the delay in offering possession by stating that the building plans were withheld by the Town & Country Planning Department (hereinafter referred to as DTCP), Haryana despite the fact that these building plans were well within the ambit of building norms and policies. It was due to the lack of clarity regarding the application of

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policy of self-certification to developers/colonizers, the respondent had to submit the building plans for approval again under the public notice dated 08.01.2014 issued by the Town & Country Planning Department which had granted 90 days to submit requests for regularization of construction. Finally, the Department vide its order dated 08.07.2015, clarified that self-certification policy was also applicable to the cases of approval of building plans submitted by the respondent. Thus, the delay in offering possession to the complainants is due to inaction of the Government or its agencies and covered under force majeure clause 14 of the Agreement.

- vii) The respondent further submitted that the complainants are also guilty of repeated defaults in making payment of installments despite repeated reminders dated 29.11.2011, 15.12.2011, 12.03.2012, 29.05.2012 etc. Since timely payment was the essence of the contract, the complaint is liable to be dismissed on this ground alone.

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- viii) As regards incidence of Goods & Service Tax, the respondent has submitted that the complainants have agreed and accepted to bear the liability of incidence of taxes under clause 7 of booking application and clause 1.39 & clause 9 of the Agreement which states that "the purchaser shall undertake the obligation to make payment of all statutory dues, fresh incidence of taxes or any enhancement of such taxes incidental to the floor allotted to him under the agreement".
- ix) As regards increased cost of escalation on the complainants, the respondent submitted that the complainants have agreed and accepted to bear the liability of escalation in cost of construction and raw materials under clause 48 of Booking Application, r/w clause 1.39 & clause 9 of the FBA.
- x) The respondent states that the complainants have been offered possession vide offer letter dated 19.07.2018 after the receipt of OC from the Department of Town & Country Planning.

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4. The Authority has considered the written and oral pleadings of both the parties in detail. It observes and orders as follows:-

- i. First of all the respondent has challenged the jurisdiction of this Authority for the reasons that the agreement between the parties was executed prior to coming into force of RERA Act. This objection is not sustainable in view of the detailed orders passed by this Authority in **complaint case No.144- Sanju Jain Vs. TDI Infrastructure Ltd.** The logic and reasoning in that complaint are fully applicable on the facts of this case as well.
- ii. The second challenge to the jurisdiction has been made on the ground that the floor area on which the floor to the complainant allotted measures less than 500 sq. mts. Thus, this project was not required to be registered therefore, the jurisdiction of this Authority does not extends to this case. This objection is also not sustainable for the same reasoning given in complaint case No.144 - Sanju Jain vs TDI Infrastructure Ltd.





Furthermore, the issue that the plot/floor is less than 500 sq. mts. is totally devoid of merits because this plot/floor is a part of larger colony being developed by the respondent. The said plot/floor is not an independent project being developed by the respondent. Numerous such plots along with other buildings are being developed by the respondents as a part of this project and the licence. For this reason also the challenge to the jurisdiction is not acceptable.

- iii. The third objection has been raised that as per the agreement, the complainant was supposed to first refer to the matter to the Arbitrator. This too is not acceptable because RERA Act provides for comprehensive remedies to the home buyers in the projects launched before coming into force of RERA Act and after coming into force of Act. Wherever substantive obligations on the part of either of the parties still subsist, the Authority will have jurisdiction to deal with those matters to resolve them in a fair and just manner.





5. Written pleadings as well as oral submissions of both the parties have been examined. Admittedly, the floor-buyer agreement between the parties was executed on 18.06.2013. As per clause 5.1 of the Agreement the delivery was to be made within 30 months from the execution of FBA, with additional 180 days as grace period. There is no controversy to the fact that as per floor buyer agreement, the deemed date of possession of the unit was 18.06.2016. The payments made by the complainant to the respondent are also admitted. Admittedly, the possession letter has been offered on 19.07.2018, thus there is a delay of more than two years in handing over the possession. Now since the possession has been offered on 19.07.2018, the prayer for refund cannot be accepted. However, the complainants shall be entitled to compensation for delay in offer of possession, which would be shown in the statement of accounts and the net payable /receive-able be clearly written after accounting for the same. This Authority has disposed of a bunch of

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petitions with the lead case **Complaint No.113 of 2018** titled **Madhu Sareen V/S BPTP Ltd.** There was consensus on all the issues except on the issue of compensation for delayed delivery of possession. Further logic and arguments in this regard were given by the dissenting member in **Complaint case No.49 of 2018- Parkash Chand Arohi V/s Pivotal Infrastructures Pvt. Ltd.** It is hereby ordered that the ratio of the said judgements will be fully applicable in this case for determining the quantum of compensation for delayed delivery of possession.

Another grievance of the complainants that the respondent has raised an additional demand of Rs. 11,82,088/- along with the offer of possession. This demand has been raised on account of cost of escalation, EDC/IDC charges, preferential location charges, club membership, electrification and STP charges, electricity connection charges, various taxes etc. The Authority by way of a unanimous decision has dealt with each of the issues in the **Complaint case**

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**No.113 of 2018- Madhu Sareen vs BPTP Ltd.** The additional demand made by the respondents shall be re-calculated in accordance with the principles laid down in complaint case No.113.

At this stage, the complainants disputed the deemed date of delivery of the unit as per FBA. As per complainants the deemed date is the date of allotment i.e. 13.06.2011. On the other hand, Ld. Counsel for respondent stated that they had send two copies of FBA to the complainants for their approval and signatures but they delayed its execution hence the deemed date is the date of execution of FBA i.e 18.06.2013.

In view of the above dispute between the parties with regard to the deemed date, the Authority directs both the parties to place on record the documents supporting their claim before next date of hearing.

Further the respondent is directed to file an affidavit stating the schedule of completion of the amenities/facilities to be provided in the Project and



supply a copy of the same to the complainant a week prior to the next date of hearing.

6. Since the project in question with respect to the present complaint has not been registered as required under section 3 of the RERA Act, 2016. Therefore, the Authority directs the office to issue a show cause notice to the respondent under section 59(1) of the RERA Act, 2016 for non-registration of the project under section 3 of the Act above."

2. Today the issue regarding deemed date of possession is settled. The complainant had disputed the deemed date of possession for the purpose of calculating compensation for delay in handing over possession by the respondent. According to him, deemed date of possession was 13.06.2014 i.e. 36 months from the date of booking i.e. 13.06.2011. On the other hand, respondent submitted that deemed date of possession was 18.06.2016 i.e. 36 months from the date of execution of the Flat Buyer's Agreement (FBA) i.e. 18.06.2013. For adjudicating upon this issue, the Authority, on the last hearing directed both the parties to place on record some evidence to substantiate their claim

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3. Today respondent has placed on record his pleadings to prove his point. On perusal of complaint and documents placed on record, it is clear that complainant had made a plea that after allotment dated 25.11.2011, there was delay in execution of agreement which finally got executed on 18.06.2013 but he has nowhere mentioned the reasons for such delay. Moreover, he has nowhere averred that he tried to communicate with the respondent for execution of FBA and the respondent refused to do the same. On the other hand, respondent himself has come up for the explanation for such delay. Respondent has averred on page 11 of his reply that two copies of FBA were sent to the complainant under cover letter dated 20.11.2012 and it was the complainant who delayed the execution of the agreement. In support of his contention, respondent has today placed some documents wherein a copy of inward and outward register/record has been annexed as Annexure A1 which shows that some document has been sent on 21.11.2012 by post for execution and the same has been received on 18.06.2013

4. Furthermore, it is evident from the clause 24 of the booking application form (Annexure 2 colly) annexed with the reply that possession was to be handed over within 30 months plus grace period

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of 180 days from the date of execution of the agreement. Accordingly said period has lapsed on 18.06.2016.

5. In view of the facts stated above, it is observed that as the booking application has been signed by the complainant, it can be said that he has signed it voluntarily, willingly and with due understanding which makes it clear that complainant had agreed to the timeline given by the respondent for offering possession. Hence, stipulated time period for delivering possession i.e. 36 months shall start from the date of execution of the agreement and deemed date of possession shall come to be 18.06.2016. Moreover, the complainant failed to explain the delay in execution of such agreement. He neither produced any communication with the respondent requesting for execution of FBA nor he revealed that two copies of agreement had been sent to him by the respondent in november 2012. In the absence of such evidence and explanations, the Authority concludes that the complainant himself has agreed to the possession timeline to be counted from the date of execution of agreement and he himself has not taken any step to get the agreement executed. So, it is observed that deemed date of possession shall be taken as 18.06.2016 for the purpose of awarding delay compensation.


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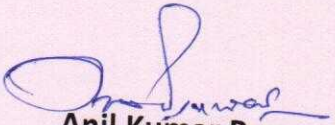


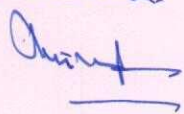
6. Further the respondent has moved an application for waiver of cost amounting to Rs. 56,000/- which was imposed by this Authority for not filing reply in time vide order dated 27.11.2018. He has explained the reason of delay in filing reply by stating that the reply sent by the respondent got misplaced by the clerk of the counsel. However, such a vague plea is no acceptable to the Authority. So, the said application is rejected and respondent is directed to pay the cost of Rs. 56,000/- to the Authority within fifteen days of uploading of this order on the website

Case is **disposed of** and file be consigned to the record room.

*Separate order attached*

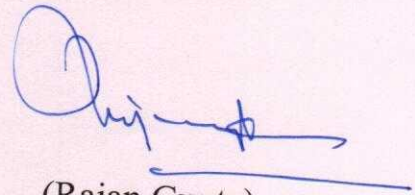
  
Dilbag Singh Sihag  
Member

  
Anil Kumar Panwar  
Member

  
Rajan Gupta  
Chairman



While concurring with my learned friends Hon'ble Members of the Authority, by way of clarification I would add that a direction is hereby given to the respondents to re-calculate the amounts payable by the complainants to the respondent in accordance with the principles laid down in complaint case No.113 of 2018 Madhu Sareen Versus BPTP Ltd. Further, a due credit in respect of the delay compensation shall also be given by the respondents to the complainants by assuming the deemed date of possession to be 18.6.2016. The principles for calculation of the delay compensation shall though be as ordered by the majority members, but the principles laid down by me in complaint case No.49 of 2018 Parkash Chand Arohi Versus Pivotal Infrastructure Pvt. Ltd. shall also remain applicable.



(Rajan Gupta)  
Chairman