



Complaint no. 459 of 2019

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 459 OF 2019

Manavi Sarma

....COMPLAINANT(S)

VERSUS

BPTP Pvt Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing:** 03.03.2022

**Hearing:** 24<sup>th</sup>

**Present:** Mr. J.S Yadav, Counsel for complainant through VC  
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel  
for the respondent.

### **ORDER (DILBAG SINGH SIHAG-MEMBER)**

While initiating his arguments, Ld. counsel for the complainant pleaded that complainant had booked a unit in respondent's project 'Park Elite Floors' situated in Faridabad on 11.12.2009. Allotment letter for unit no. E-40-19-SF; having area of 876 sq ft was issued to him on 24.12.2009. Thereafter, builder buyer agreement was executed between the parties on 20.07.2010. In terms of clause 4.1 of it, deemed date of handing over of possession was 20.01.2013 (24+6 months). Complainant



has already paid Rs 22,45,250/- against basic sale price of Rs 16,08,004/-.

Possession of the unit was offered to the complainant on 16.08.2018 alongwith further demand of Rs 3,83,720/-. Said offer was not supported with occupation certificate. In demand letter, a number of charges raised on account of GST; club charges; cost escalation and EEDC have been impugned. Complainant claimed 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 in the absence of occupation certificate. Feeling aggrieved, this complaint has been filed by the complainant who has sought direction against respondent to deliver possession of unit alongwith delay interest in terms of builder buyer agreement and quash unjustified demand.

Complainant in terms of order dated 30.11.2021 had filed amendment application for claiming the delay interest in terms of Rule 15 of HRERA Rules,2017 in the registry on 21.12.2021. Copy of said application has already been supplied to respondent on 06.01.2022.

2. On the other hand, respondents in their reply have denied all the allegations made by complainant with 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 completely ignoring clause 33 of the agreement which provides that dispute involved therein 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 proceedings being adopted by this Authority. So, 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 876 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). As far as delay caused in offering possession of the allotted unit is concerned, it has been stated that delay has been occurred due to inaction of the government or its agencies on time , hence, it should be inferred that any delay which has been unfortunately caused due to force majeure circumstances as the same were beyond control of the developer. Further, it has been stated that 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 ,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 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 should also applicable 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 89,008/- to the complainant and has made payment of Rs 21,56,242/- only.

(v). After completing construction work of the unit, offer of possession was made to complainant on 16.08.2018 alongwith demand on account of various charges which were duly agreed between the parties as per terms of BBA. All charges demanded by respondent are in





consonance with the terms of BBA. It is the complainant who was at fault by not coming forward to take possession of the unit after paying due amount as demanded alongwith offer of possession.

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

(i) Maintainability of the complaint

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 vis-à-vis the provision of Section 79, Section 80 and Section 89 of the Act by virtue of which all disputes relating to 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. 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.

Apart from above, as far as 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. or less is concerned, it is observed that respondent has been developing a larger colony covering several hundred acres of land. Some part of the project is being developed in the shape of floors construction on various size of plots with a given FAR (floor area ratio) permitted by the competent authority while approving its zoning plan. Over such plots, 3 to 4 flats are being constructed on each plot and the same are being sold to different individuals. Such practice is permissible in view of provisions of the Haryana Development and Regulation of Urban Areas Act, 1975. However, registrability and jurisdiction of this Authority has to be determined with reference to overall area of a larger colony being promoted by the developers instead of a single plot of 500 sq mtrs or less. Hundred of floors are being constructed over hundred of plots. The arguments of the respondent that plot does not exceeds 500 Sq. Mtrs,





therefore there is no jurisdiction of this Authority is not correct from legal point of view. The provisions of Section 3 (2) (a) of RERA Act,2016 are applicable, in case total area of the project is less than 500 Sq, Mtrs. So, the arguments of the respondents in this regard are hereby rejected. The relevant part of Section 3(2)(a) is reproduced for ready reference:-

*“Notwithstanding anything contained in sub-section (1) , no registration of the real estate project shall be required-*

*Where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to have developed does not exceed eight inclusive of all phases”.*

As far as contention of the respondent for seeking force majeure in this case as per his pleading recorded in paragraph 2(iii) is concerned, the same does not hold any merit. Respondent has misinterpreted the concept of self certification policy. This policy is a facility given to the owner of any plot to construct his building to be planned by any registered architect and supervised by structural engineer provided such building is in conformity with building bye laws notified by the department of Town and Country Planning or in conformity with Haryana Building Code, 2017. Under this scheme, owner of any plot of licensed colony, is not required to await the approval of building plans from the competent authority of department of Town and Country Planning rather he is required to submit a copy of proposed building plan to the concerned DTP with a intimation that after expiry of stipulated time of 15 days from the





submission of building plan if nothing received in black and white from such authority then he can proceed with the commencement of construction of building and after completion of the same he is also entitled to issue a completion certificate mentioning that building has been raised in conformity with building bye laws and approved zoning plan. In view of the above facts, the averment of the Ld. counsel of the respondent does not hold any merits and hence the same is hereby rejected.

(ii) Offer of possession

Admittedly respondent has issued offer of possession dated 16.08.2018 to the complainant alongwith demand for payment of additional Rs 3,83,720/-. However, said offer was not accompanied with occupation certificate issued by State government agency. Today, Id. counsel for the respondent stated that construction work was complete and unit was ready for handing over of possession as the time of offer of possession i.e. August,2018, in support he is relying upon chief engineer's report dated 09.11.2018 and thereafter developer had applied for grant of Occupation Certificate on 29.11.2018 which got received on 21.10.2021. He argued that delay interest be only awarded to complainant only upto offer of possession as unit was ready and project was complete at that time. While rebutting it, Ld. counsel for complainant argued that possession was not





valid as neither it was supported with occupation certificate nor unit was complete at that time, in support he referred to email dated 10.09.2018 annexed as Annexure C-17 at pg 114 of complaint wherein respondent had clearly stated that 'We are striving to get the work completed on a high priority'.

Authority after hearing submissions of both parties and perusing relevant record is of view that offer of possession cannot be considered as good/valid offer in absence of occupation certificate which has been received by developer on 21.10.2021. Further vide email dated 10.09.2018 sent by respondent himself it is clear that unit was not ready for possession as construction work was going on at that time. Regarding plea of chief engineer's report, it is observed that said report is not annexed with reply nor otherwise placed on record and as such report only provides the status of completion of entire structure which in essence does not have any relation with occupying the flat/apartment. For these reasons, it is decided that offer of possession can be deemed valid only with effect from 21.10.2021 date of occupation certificate and the complainant deserves to be awarded delay interest from the deemed date of possession i.e. 20.01.2013 till the date of receipt of occupation certificate i.e. 21.10.2021.

(iii) Delay interest



Complainant in original complaint filed by him has sought delay interest in terms of BBA i.e. Rs 5 per sq ft. Now, in terms of order dated 30.11.2021 complainant has filed an amendment application dated 12.12.2021 for claiming delay interest in terms of Rule 15 of HRERA Rules,2017. Said application is taken on record. Allottee in terms of RERA Act,2016 is entitled to claim delay interest in terms of Rule 15 of HRERA Rules,2017 and in complaint no. 113/2018 already decided by this Authority on 16.07.2018 detailed reasoning for said entitlement has been provided. Reasoning and explanation of that case is applicable here also. So, the application is allowed.

In furtherance of above mentioned observations, it is decided that payment of delay interest amounting to Rs 15,84,442/-calculated in terms of rule 15 of HRERA Rules,2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from 20.01.2013 (deemed date of possession) to 21.10.2021 (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, GST and EEDC 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 15,84,442/- 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. As per version of complainant he has paid Rs 22,45,250/-. However, receipts of Rs 22,26,759/- is attached in file. Paid amount of Rs 22,45,250/- has been admitted in the offer of possession dated 16.08.2018. So, the difference in amount of Rs 18,491/- will be taken from the date of offer of possession. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 21,18,420/-. Said total amount has been worked out after deducting charges of taxes paid by



complainant on account of EDC/IDC amounting to Rs 1,06,461/- and Rs 20,369/- paid on account of VAT from total paid amount of 22,45,250/-.

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.

  
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RAJAN GUPTA  
[CHAIRMAN]

  
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DILBAG SINGH SIHAG  
[MEMBER]