



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Complaint No. RERA-PKL-944 of 2018

Anil Gupta and another.

...Complainants.

Versus

M/s B.P.T.P. Limited.

...Respondent.

Date of hearing:- 02.04.2019 (4th Hearing)

Coram:- Shri Anil Kumar Panwar, Member
Shri Dilbag Singh Sihag, Member.

Appearance:- Shri Arun Kundra Advocate for complainants.
Shri Hemant Saini, Advocate for respondent.

ORDER:-

1. The complainants herein had purchased a flat measuring 876. Sq. Fts. from the respondent-company. Flat buyer's agreement was executed between the parties on 09.08.2010. The sale price of flat was fixed at Rs. 16,08,004/-and the complainants have already paid an amount of Rs. 19,40,018/- including EDC etc. Their grievance is that the respondent was duty bound to deliver them the possession within a period of 24 months and grace period 180 days was allowed to him for applying and obtaining the occupation certificate but he has

not handed over the possession to them till date. Another grievance raised by the complainants is that the respondent has arbitrarily increased the super area and the basic price of the flat. So, they have filed the present complaint seeking directions against the respondent to handover possession with promised amenities and to pay delay compensation.

2. The respondent has tried to explain in his reply that the delay has occurred due to lack of clarity in the policy of self-certification prescribed for developers. Because of such ambiguity, he had to submit fresh buildings plans in response to public notice dated 08.01.2014 issued by the Town and Country Planning Department. It was averred that the concerned department had clarified the policy vide order dated 08.07.2015 and therefore, there were forced majeure conditions existing in respect of the project in question. As regards increase in super area, the respondent had submitted that the complainants were aware of the fact that super area mentioned in buyer's agreement is tentative in nature and was liable to be changed. According to him, the complainants have made payments even after increase of super area without any objection and they cannot, therefore, raise any grievance qua increase of super area.

3. After considering the pleadings and submissions of the parties, the Authority observes as under:-

- (i) The complainants herein are not seeking refund even after the lapse of the date by which the respondent was duty bound to deliver possession. They are rather interested for delivery of possession to



them alongwith delay compensation. So, the Authority will hold that the complainants are entitled to obtain possession of the flats alongwith delay compensation.

- (ii) This Authority vide a detailed judgment in Madhu Sareen Versus M/s BPTP case has ruled by a majority decision that the allottees after the lapse of deemed date of possession will be entitled to delay compensation equivalent to the amount of interest to be calculated on the already paid amount @ prescribed in Rule 15 of the HRERA Rules, 2017. In a subsequent judgment, the Hon'ble Chairman of the Authority has expressed a minority view. The decisions so rendered are pending scrutiny before the Hon'ble Appellate Authority. So, this Authority will directs the respondent to deliver possession to the complainants after obtaining occupation certificate, alongwith delay compensation to be calculated as per the majority view in Madhu Sareen case (Supra), subject to the condition that the amount so calculated will be liable to modification in terms of the judgment passed by the Hon'ble Appellate Authority.

4. This Authority in complaint case No. 607 of 2018 titled as "Vivek Kadyan Versus TDI" has laid down a principle for determining increase in super area. So, the respondent is directed to calculate the super area strictly as per the principle laid down in the said judgment and is also directed to supply a



detailed statement to the complainants indicating component-wise increase of super area. For the purpose of preparing such statement, the respondent shall calculate each component of super area strictly as per its dimensions reflected in the approved lay out plan. The complainants will be at liberty to file fresh complaints for redressal of their grievance, if any, component of super area is not calculated in accordance with principles laid down in Vivek Kadyan's case.

5. The Authority will further direct the respondent that he shall not raise any demand in respect of such amenities which are not presently available with the complainants. However, the respondent will be entitled to raise such demand after the amenities provided and made available to the complainants.

6. The complaint is **disposed of** in view of aforesaid terms. Order be uploaded on the website of the Authority. File be consigned to the record room.



Dilbag Singh Sihag
Member



Anil Kumar Panwar
Member