



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 236 OF 2021

Gaurav Malik Lata and Subhash Chander MalikCOMPLAINANTS(S)

VERSUS

BPTP Ltd

.....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing: 5th

Present: Shri Satish Mishra, Learned counsel for the Complainant through video-conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Learned counsels for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Brief facts as averred by complainant are that complainant was allotted unit no. PA-191-SF, having super area of 1050 sq. ft. in the

respondent's project Park-81, Parklands Faridabad on 05.04.2012. Builder Buyer Agreement (BBA) was entered between the parties on 03.01.2013 and in terms of clause 5.1 of the said agreement, possession was to be delivered within 30 months plus 180 days i.e., by 03.01.2016. Complainant has already paid an amount of Rs. 33,93,162/- against basic sale price of Rs.30,15,002/-. The fact of basic sale price of Rs. 33,93,162/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure A-2 to the complaint. In support of the averment that said amount of Rs. 33,93,162/- has been paid the complainant has annexed statement of accounts as annexure A-3 to the complainant.

2. Further facts of the matter are that respondents offered possession of the booked apartment to the complainant on 11.06.2019. The said offer of possession was conveyed with an additional demand of Rs. 11,21,628.56/-. The complainant alleges that they did not accept the said offer of possession given by the respondent for the reasons of wrongful additional demand of Rs. 11,21,628.56/- made by the respondents; and that the offer was without obtaining occupation certificate of the building from authorities concerned of the State Government. Complainant has impugned additional demands against various components like preferential location charges (PLC), monthly maintenance charges, increase in super area, change in specification of material,



Interest on delayed payment and cost escalation. It is further stated that delay possession charges offered by the respondent is 3.77% only whereas he has sought the same as per provisions of Rule 15 of HRERA Rules 2017 considering law laid down in complaint case no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd, and provisions of section 18 of the Act.

3. Feeling aggrieved, present complaint has been filed by the complainant seeking direction against respondent to pay delay interest and quash additional demands on account of PLC, monthly maintenance, increase in area, change in specification of material, cost escalation and interest on delayed payment. Further, complainant prayed that respondent be directed not to levy maintenance charges during pendency of this complaint.

4. Respondents in their reply have admitted allotment of booked unit in favor of the complainant. They have also admitted that said Floor Buyer Agreement had been executed. No statement with respect to the amount paid by the complainant has been made by the respondent and respondent has denied the allegations made by the respondent in respect of PLC, maintenance charges, change in super area and change in specification of material. The respondents however submit as follows



- (i) Complainants are indulging in forum shopping. They have initially filed the complaint at National Company law tribunal in which the tribunal dismissed the complaint on the ground of non-maintainability in view of amendment of Section 7.
- (ii) Since the unit in question is being constructed over plot area measuring 102.74 sq. mtrs. As per section 3(2)(a) of RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 sq. meters.
- (iii) As per clause 5.3 of the agreement it was duly agreed that in case respondent fails to handover possession within stipulated time period, compensation @ Rs. 5 will be given to the complainant for every month of delay. Complainants were offered delay penalty amounting to Rs. 3,04,783/- at the time of offering possession.
- (iv) Complainants have defaulted in making payments and therefore they are themselves in contravention of section 19(6) and 19(7) of the Act.
- (v) With respect to preferential location charges it is submitted that the same were agreed by the complainant vide clause 1.35 and 2.6 of the duly executed agreement.



(vi) With respect to increase in area it is stated that Authority in its complaint no. 607 of 2018 titled as Vivek Kadyan vs TDI Infrastructure Pvt. Ltd. has held that builder can unilaterally increase the super area from range 5% to 10 %.

(vii) Possession of unit after completing its construction was offered to complainant vide letter dated 11.06.2019 whereas occupation certificate was received by the respondent on 27.12.2019. It is the complainant who has failed to take over possession of his unit.

5. The issues which needs adjudication in this case are delay interest, additional demands on account of PLC, monthly maintenance, increase in area, change in specification of material and cost escalation. Authority in its fourth hearing of this case dated 25.11.2021 has already decided the issues in respect to maintenance charges, cost escalation and delay interest. Operative part is being reproduced below for ready reference:

"Maintenance charges shall be paid by the complainant from the date of occupation certificate i.e., 27.12.2019 and not for the period before occupation certificate in any circumstances.

Undisputedly, respondent had sent an offer of possession to complainant on 11.06.2019 when he had not obtained an occupation certificate from the competent Authority. Rather, occupation certificate was granted 6 months thereafter on 27.12.2019. So, offer of possession can be deemed valid only with effect from 27.12.2019 and complainant deserves to be awarded delay interest



from deemed date of possession i.e., 03.01.2016 till the date of receipt of occupation certificate i.e., 27.12.2019.

Authority has already laid down guidelines for calculation of cost escalation in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd and therefore the respondent shall calculate cost escalation in this case as per said guidelines. Respondent will supply copy of said calculations to the complainant and in case complainant finds some discrepancy therein he will be at liberty to file a fresh complaint to espouse his grievance in that regard."

In the hearing dated 25.11.2021 respondent was directed to place on record a copy of approved demarcation/layout plan of the project showing the site of the complainant for proving that there is a park and complainant's unit is park facing and formula adopted by respondent for increasing super area from 1050 to 1103 sq. ft. Further, complainant was directed prove this allegation that respondent has changed the material in the kitchen and installed a single bowl kitchen sink with drain board instead of double bowl sink as claimed in brochure.

6. Issues which remain pending for adjudication now are quantum of delay interest, preferential location charges (PLC), increase in super area and change in material of kitchen.



7. Learned counsel for the respondent has submitted the information sought by him vide order dated 25.11.2021 by way of an application dated 07.03.2022 and made the following submissions:

- (i) Increase in super area is of 5.04 % and this is within the terms of clause 2.13 of the duly executed FBA.
- (ii) An amount of Rs. 3,16,561/- has been charged on account of PLC which was duly agreed between the parties as per clause 2.3 of the agreement. Unit allotted to the complainant is park facing and therefore respondent is fully justified in charging the same from the complainant.
- (iii) With respect to change in material of kitchen it is submitted that it was agreed as per annexure- B of the agreement which states that respondent was to provide Granite counter with single bowl stainless steel sink with drain board.

8. Complainant has also filed the information sought by him vide order dated 25.11.2021 on 12.01.2022. Leaflet of the advertisement brochure has been placed on record in which it is specifically mentioned that kitchen platform will be granite counter with double bowl stainless steel sink with drain board.

9. During the course of hearing today the ld. Counsel of complainants reiterated their written submissions. In addition, ld. counsel for the complainant



referred to page 139 of complaint which shows that there is a substation between the plot of the complainant and park. He submitted that his plot is not park facing rather it is facing a substation. Further, he argued that complainant is not liable to pay maintenance as after offering possession on 11.06.2019 respondent did not intimate him of receipt of occupation certificate which respondent was duty bound to do.

10. Authority has gone through written submissions made by both the parties as well as have carefully examined their oral arguments. Authority has already decided the issues relating to delay interest, cost escalation and maintenance charges. Issues which remain pending for adjudication are quantum of delay interest, preferential location charges (PLC), increase in super area and change in material of kitchen. Further it observes and orders as follows: -

(i) Basic facts of the matter are undisputed that the apartment was allotted by the complainant on 05.04.2012 and Builder-Buyer Agreement was duly executed and complainant has made payment of Rs. 33,931,62/- to the respondents. The respondents had issued an offer of possession on 11.06.2019 but without obtaining an occupation certificate. The respondents received occupation certificate 27.12.2019.

(ii) On perusal of the record it is revealed that the plot of the complainant is not park facing rather a substation lies in front of the plot of the complainant. In absence of any park no such charges can be levied upon the complainant and PLC is hereby quashed and complainant is not liable to pay any such amount.

(iii) Super area has been increased to the extent of 5.04 % and is within the prescribed limits and as per the duly executed agreement. So, increase in super area is justified.

(iii) With respect to change in material of kitchen this Authority decides that brochures cannot be enforced as these are only advertisements. On perusal of Annexure-B it is revealed that the stand taken by respondent is correct and it is granite counter with single bowl stainless steel sink with drain board. Authority is duty bound to enforce agreements only and therefore argument of complainant is rejected in this regard.

(iv) Maintenance Charges: It cannot be charged because possession has not been delivered and complainant has some justification in denying acceptance of possession.

(v) Quantum of delay interest

The offer of possession was given to the complainant at the time when the project had not received the occupation certificate, so neither the offer was valid

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nor even the complainant was obliged to accept the same. That being so, mere fact that the complainant did not accept the offer will not disentitle him for interest which he is otherwise entitled to seek on the already paid amount on account of delay in offering the possession.

The possession as per BBA was required to be delivered latest by 03.01.2016 and since the respondent could not offer possession by that date, the complainant is entitled for delay interest from 03.01.2016 to the date on which the project had received the occupation certificate i.e., on 27.12.2019.

Delay interest has been got calculated from the Accounts Department of the Authority terms of rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.30%) for the period ranging from deemed date of possession (03.01.2016) till date of receipt of occupation certificate (27.12.2019). Such interest works out to Rs. 11,13,471/- and it is held payable by the respondent to the complainant.

The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs. 30,05,555/- Said total amount has been worked out after deducting charges of taxes paid by complainant on account of development charges amounting to Rs. 3,59,685/- and Rs 27,922/- paid on account of VAT from total paid amount of Rs. 33,93,162/-. 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.

11. Respondent shall issue statement of accounts in terms of directions issued in this order within 30 days duly incorporating therein amount of delay interest of Rs. 11,13,471/- and complainant shall take possession of his unit after paying balance dues, if any within 30 days of receipt of statement of accounts.

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)