



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1107 OF 2021

Raj Kumar Dimania

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing: 4th

Present: Mr. Hardik Dimania, Representative for complainant through video- Conferencing.
Shri Hemant Saini and Shri Himanshu Monga, Counsels for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

1. Complainant is seeking review of the order passed by Authority in complaint no. 1050 of 2019. In the said order delay interest payable to the complainant was calculated. Relevant part of the order is being reproduced as follows:

"A difficulty however is being faced by the Authority that parties have produced receipts of only Rs.15.74 lacs paid from the year 2006 up to year 2016. Obviously more money has been paid as has been shown by the respondent in

their statement of accounts received to the complainant in 2018 showing that an amount of Rs.20.41 lacs stand received from the complainants. The Authority, therefore, is calculating the delay interest for an amount of Rs. 7,63,125/- paid upto the deemed date of possession from 01.12.2011 up to 27.7.2021 i.e., the date of passing this order. For this period delay interest works out to Rs. 6,85,207/-

For the remaining amounts of Rs. 4,30,487/- paid from 08.02.2012 up to 03.12.2012 the delay interest works out to Rs. 3,72,593/- for the periods ranging from February 2012 to July 2021 on various instalments paid by the complainant.

Interest on the amount over and above Rs.11,93,612/- as shown in the statement of the year 2018 is being calculated from the year 2018 till date on an amount of Rs. 4,00,000/-. It works out to Rs. 1,02,020/-

Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 11,59,820/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 15,85,194/- monthly interest of Rs. 15,821/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 15,93,612/-. Said total amount has been worked out after deducting VAT amounting to Rs 20,998.69/-; EDC amounting to Rs 1,53,600/-, EEDC amounting to Rs. 2,06,400/- and IDC amounting to Rs. 66,750/- from total amount of Rs 20,41,361.05 paid by complainant. These amounts are not payable to the builder and are rather required to be passed on by

the builder to the concerned department/authorities. If a builder does not pass on this amount to the concerned department the interest thereon becomes payable 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 and EDC, EEDC and IDC collected by a builder cannot be considered towards determining the interest payable to the allottee on account of delay in delivery of possession.

Complainant had produced the receipt of payments amounting to Rs. 15.24 lacs out of the total paid amount of Rs. 20.41 lacs. Delay interest was calculated on the amount of Rs. 11,93,612/- on the basis of receipts placed on record, Rs. 4,47,748.69 were deducted from the total amount on account of taxes etc. In absence of receipts, delay interest on the remaining amount of Rs. 4,00,000/- was calculated taking the statement of accounts of 2018 as the basis. Now the complainant has placed on record his payment receipts and he is seeking re-calculation of delay interest payable to him by the respondent.”

2. Representative of the complainant has now placed on record receipts for Rs. 4,00,000/- (Rs. 3,00,000/- being paid on 03.02.2006 and Rs. 1,00,000/- on 21.05.2012) vide present review petition and has requested that delay interest should be re- calculated.

3. On the last date of hearing, it was observed by the Authority that relief claimed by the complainant deserves to be granted and delay interest on Rs. 3,00,000/- should be re- calculated from 01.12.2011 to 27.07.2021 and on

the amount of Rs. 1,00,000/- from 21.05.2012 to 27.07.2021. Case was fixed for arguments of ld. counsel for the respondent.

4. Learned counsel for respondent argued that under section 39 of the Act this Authority has power of rectification of orders only when the mistake is apparent on face of record and not otherwise. He submitted that allowing amendment in calculation of interest will result in change in substantive part of the order which is prohibited under the law by way of review.

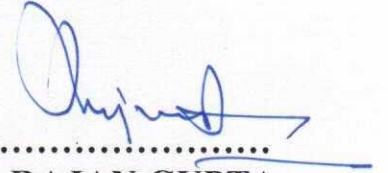
He further submitted that the receipts which have now been produced before this Authority were in the possession of the complainant earlier as well, but he did not place the same on record while filing his original complaint.

5. Authority observes that complainant was in possession of receipts now being submitted by him at the time of filing his original complaint no. 1050 of 2019. Complainant was duty bound to submit proper record at the time of filing his original complaint. Authority has decided the matter on the basis of evidence adduced. Now after final decision, complainant cannot be allowed to produce additional evidence.

Further re-calculation of interest at this stage will amount to alteration of substantive part of the order which is not allowed as per section 39 of RERA Act. Therefore, recalculation of interest at this stage cannot be allowed and prayer of the complainant is dismissed in this regard.



6. Case is **disposed of**. File be consigned to record room after uploading order on the website of the Authority.



.....
RAJAN GUPTA
(CHAIRMAN)



.....
DILBAG SINGH SIHAG
(MEMBER)

