



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 853 of 2021

Kapil Suri

VERSUS

....COMPLAINANT(S)

M/s BPTP Ltd

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing: 3RD

Present: - Mr. Sumit Suri, Ld. Counsel for the complainant through VC.
Mr. Hemant Saini, Ld. Counsel for the respondent.

ORDER (DILBAG SINGH SIHAG-MEMBER)

The captioned complaint has been filed by the complainant seeking relief of possession of the booked apartment along with permissible interest as applicable as per rules for delay in offering possession apart from quashing certain allegedly illegal demands raised by respondents.

2. Brief facts as averred by the complainant are that he had booked an apartment in an under construction project 'Park Elite Premium', sector -84, Faridabad being promoted by the respondents on 17.08.2009. An allotment letter dated 12.01.2010 was issued vide which unit No. G-506 with 1128 sq. ft. area was allotted to the complainant. Builder Buyer Agreement was executed on 06.01.2011. In terms of Clause 3.1 of the BBA possession was to be delivered within 36+6 months i.e. by 06.07.2014. Complainant has already paid Rs. 28,49,733.08/- against agreed basic sale price of Rs 22,80,997 /-. The fact of basic sale price of Rs. 22,80,997 /- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure P-10 to the complaint. In support of the averment that said amount of Rs. 28,49,733.08/- has been paid, complainant has annexed receipts issued by the respondents to the complainant. The copies of said receipts have been made part of the complaint and annexed as Annexure P-3 to P-26.

3. Further it has been alleged by the complainant that respondent was supposed to deliver possession by year 2014 but he has not offered it till date. Feeling aggrieved, present complaint has been filed by the complainant seeking direction to the respondent to deliver possession of unit alongwith delay interest and further justification of increase in super area from 1128 to 1235 sq ft.

4. Respondents in their reply have admitted allotment of booked unit in favour of the complainant. They have also admitted that said Floor Buyer

Agreement had been executed. Respondents have not denied the payments made by the complainant. While submitting their pleadings as follows:-

- (i) That possession of booked apartment has been delayed on account of force majeure conditions which mainly relates to the delayed approval of their plans by the departments concerned of the State Government.
- (ii) That provisions of RERA Act do not apply on the agreement executed prior to coming into force of the RERA Act. Respondents have argued that agreements executed prior to commencement of RERA Act, 2016 should be dealt with in terms of clauses of the said agreement.
- (iii) Regarding possession of unit, it has been stated in para 11 and 13-14 of reply that offer of possession will be sent to complainant as and when the occupation certificate be obtained. Further it has been stated that respondent had already applied for occupation certificate on 10.05.2019 for tower-G in which complainant's unit is located and Chief engineer, HSVP Panchkula had already carried out inspection and submitted his report dated 21.09.2019 vide which it has been stated that external and internal services in the project are complete and functional. Further it has been stated that thereafter upon application for the fire NOC the respondent was instructed to construct an additional external fire staircase due to subsequent change in fire norms which was contrary to the sanctioned fire plan. After



construction of additional staircase, respondent has received fire NOC from DG-fire services on 24.02.2020. Thereafter, major issue got struck in the wake of pandemic COVID-19 due to which the documentary works got delayed and occupation certificate has not been received till date.

5. During the course of hearing today, ld. Counsel of the complainants reiterated their written submissions and prayed for relief as cited in para 3 above.

6. Respondents on the other hand stated that the project is complete. They had applied for grant of occupation certificate in May, 2019 and it is the State Government authorities who are delaying grant of occupation certificate. The project is ready to be occupied. Sh. Hemant Saini, learned counsel for the respondents further argued that respondents are ready to offer of possession of the allotted unit or alternatively they are ready to refund the money paid by complainant along with interest.

7. Authority has gone through written and verbal submissions made by both the parties while passing these orders in following manner:-

- (i) Basic facts of the complaint are undisputed especially with regard to booking of apartment on 17.08.2009 by the complainant and execution of Builder-Buyer Agreement. Payment of Rs. 28,49,733.08/- was made by the complainant to the respondents. Respondents had applied for



grant of occupation certificate in May, 2019 but the same has yet not been granted and no offer has been made to complainant till date.

- (ii) There is no denial to the fact of Rs. 28,49,733.08/- having been paid by the complainant to the respondents. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainant. The copy of said receipts has been made part of the complaint and annexed as Annexure P-3 to P-26.
- (iii) Respondents have not cited any genuine reason as to why occupation certificate has not been granted to them. They have not brought on record any correspondence having been exchanged between them and the department to prove that project is otherwise complete and habitable in all respect. It is the responsibility of the respondents to complete all formalities for obtaining occupation certificate. It is to be presumed that there must have been some deficiencies in the application for grant of OC that the State Government has not granted it for last 3 years. For such deficiencies, no liability can be cast upon the complainants. Complainants are entitled to completed and duly certified apartments as per approved building plans and approved service plan estimates.
- (iv) Authority is of the view that receipt of occupation certificate is an important milestone in the life span of a project. The occupation certificate establishes that the building has been constructed in



accordance with the approved plans and in conformity of Building Code,2017 of the State. It further proves that all legal formalities are complete in respect of the project and no hindrance or liability will be faced by the allottees. It also proves that requisite certificates for habitable apartment like fire safety, structural safety certificates, electrical plans etc. have been obtained.

Other side of the proposition is that none of the aforesaid statutory conditions are certified to have been fulfilled if an occupation certificate has not been received. Without such a certificate, there is no guarantee that the rights of the allottees shall be fully safeguarded and they will not face any problem in getting conveyance deeds executed in their favour.

Allottees however may choose to take possession of an apartment which has not yet received occupation certificate at their own will, choice or risk, but an allottee cannot be forced to occupy an apartment in a project without having received occupation certificate. In other words, it is a choice available to the allottee to accept possession of such apartment or not. The allottee has an inalienable right that his apartment has been certified as fit to be occupied by relevant authorities of the State Government. The allottee is very much within his right to refuse



possession of an apartment in respect of which occupation certificate is yet to be received.

(v) Further, consequence to the above proposition is that complainant is entitled to receive a valid offer of possession and accordingly, his right to get delay interest will continue till he receives proper and lawful offer of possession duly supported with occupation certificate.

(vi) One of the averments of respondents is that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents have argued that relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms and conditions of the provisions of Builder-Buyer Agreements.

In complaint No. 113 of 2018, titled 'Madhu Sareen Vs. BPTP Ltd.' Authority had taken a unanimous view that relationship between builders and buyers shall be strictly regulated by terms of agreement, however, there was a difference of view with majority two members on

one side and the Chairman on the other with regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. The Chairman had expressed his view in the said complaint No. 113 of 2018 as well as in complaint No.49 of 2018 titled 'Parkash Chand Arohi Vs. Pivotal Infrastructures Pvt. Ltd.' The majority judgment delivered by Hon'ble two members still holds good as it has not been altered by any of the appellate courts.

Subject to the above, argument of learned counsel for the respondents that provisions of agreement are being altered by Authority with retrospective effect, do not hold any ground.

- (vii) The Authority observes that in the event of a project not being completed within reasonable time, a right has been given to the allottees by Section 18 of RERA Act under which the allottee has an option either to seek refund of the amount paid along with interest or to continue with the project for seeking possession, but could demand monthly interest for the entire period of delay. The Authority observes that the right given to the allottee by Section 18 cannot be denied by the Authority. It is only the complainant who by way of compromise with the respondent could arrive at a different settlement, therefore plea of respondent that he is ready to refund the paid amount to complainant with interest cannot be entertained.



- (viii) In furtherance of aforesaid observations, respondents are directed to send a fresh offer of possession to the complainants after receipt of occupation certificate. They should also issue them a fresh statement of account in which lawful and justified demands as per Builder Buyer Agreement could be made. If the complainant feels aggrieved by such statement of account he will be at liberty to approach this Authority by filing a fresh complaint.
- (ix) A delay of more than 8 years has already been caused. This fact of inordinate delay having been caused entitles the complainant to upfront payment of delayed interest amounting to Rs. 16,50,865/- within a period of 90 days from uploading this order. This delay interest has been calculated from the Accounts Department of the Authority for the period from the due date of possession till the date of passing this order i.e 06.07.2014 to 09.03.2022 in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.30%. The complainants will further be entitled to monthly interest of Rs. 17,921/- from the date of passing this order till the date a valid and lawful offer of possession is made.
- (x) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 23,12,348.88/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,70,540.25/-, Rs 29,113/- on account of



VAT and Rs 3,37,730.95/- paid on account of EEDC from total paid amount of 28,49,733.08/-. The amount of such taxes is not payable to the builder 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 by the promoter respondent to the department concerned. So, the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.

- (xi) It is added that if any lawful dues remain payable by the complainants to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.
8. **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]