



Complaint no. 1046 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1046 OF 2020

Chander Kala Uniyal

....COMPLAINANT(S)

VERSUS

1. M/s BPTP Ltd
2. M/s Countrywide Promoters Pvt Ltd

....RESPONDENT(S)

CORAM: **Rajan Gupta**
 Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 30.03.2022

Hearing: 12th

Present: -Mr. Gaurav Gupta, Ld. Counsel for the complainant through VC
 Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the
 respondent

ORDER (DILBAG SINGH SIHAG-MEMBER)

Captioned complaint has been filed by the complainant seeking relief of possession of the booked apartment along with interest as applicable under rules on account of delay in offering possession.

2. Brief facts as averred by the complainant are that an original allottee named Ompal Singh had booked an apartment in an under construction project 'Park Elite Floors', sector -75, Faridabad, promoted by the respondents on

22.05.2009 by paying Rs 2 lacs. An allotment letter dated 24.12.2009 was issued vide which P-07-18-FF with area of 876 sq ft was allotted to the original allottee. Builder Buyer Agreement was executed on 08.03.2010. In terms of Clause 4.1 of the BBA, possession was to be delivered within 24+6 months i.e. by 08.09.2012. Complainant had purchased allotment rights of booked unit from original allottee in May,2010. An amount of Rs. 17,30,211.90/- has already been paid against agreed basic sale price of Rs.16,08,004/-. Fact of basic sale price of Rs. 16,08,004/- having been agreed between the parties is endorsed by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-1 to the complaint. In support of the averment of amount of Rs. 17,30,211.90/- complainant has annexed a statement of account dated 14.08.2013 issued by the respondents to the complainant. Though complainant has, not submitted receipts of payments. Said statement of accounts has been made part of the complaint and annexed as Annexure C-3. Present complaint has been filed by the complainant seeking direction against the respondent to deliver possession of the unit alongwith delay interest apart from justification of increase in super area from 876 to 1043 sq ft.

3. Respondents in their reply have admitted allotment of booked unit in favour of the complainant and execution of Floor Buyer Agreement while submitting following pleadings:-



- (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) In this particular case, respondent are alleging that complainant had defaulted in making timely payments as demanded vide demand letter dated 13.02.2018 on stage of completion of brick work for amount of Rs 2,62,242.49/- and said amount has not been paid by the complainant till date.
 - (iv) Regarding possession, it has been stated that construction of the unit is going on in full swing and possession will be handed over shortly.
4. During the course of hearing today, Sh. Gaurav Gupat, Id. Counsel of complainants reiterated their written submissions and prayed for relief as cited in para 2 above. Sh. Hemant Saini, Id. counsel for the respondents argued that respondents are ready to allot alternate unit in completed project if complainant is ready to shift. Complainant rejected such proposal by insisting upon relief prayed in complaint only.

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5. Authority has gone through written as well as oral submissions made by both the parties while passing following orders:-

- (i) Basic facts of the complaint are undisputed regarding allotment of unit to the original allottees on 22.05.2009 and execution of Builder-Buyer Agreement between the original allottee and respondent on 08.03.2010. Besides, no possession has been offered by respondent till date and as per version of respondent, construction is going on in full swing and possession will be handed over shortly to complainants.
- (ii) There is no denial to the fact of Rs. 17,30,211.90/- having been paid by the complainant to the respondents. Payment of this amount is further adequately proved from the statement of account dated 14.08.2013 issued by the respondents to the complainant. The copy of said statement of account has been made part of the complaint and annexed as Annexure C-3.
- (iii) 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.

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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 *ibid*. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms 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. 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.

- (iv) For the forgoing reasons it is decided by the Authority that the complainant who has been waiting for last 9 years to have possession of unit should not suffer anymore on account of default on the part of



respondent and entitled to be paid interest for the delay period from the deemed date of possession till handing over of possession that too only after receipt of occupation certificate as per principles laid down in complaint no. 113/2018 Madhu Sareen vs BPTP Pvt Ltd in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.3%) for the period ranging from 08.09.2012 (deemed date of possession) to 30.03.2022. Further, monthly interest shall also be payable upto the date of actual handing over of the possession after obtaining occupation certificate.

- (v) A delay of more than 9 years has already been caused. This fact of inordinate delay rightly entitled the complainant to get upfront payment of delayed interest amounting to Rs. 13,18,604/- within a period of 90 days from uploading of this order. This delay interest has been got calculated from the Accounts Department of the Authority for the period from the due date of possession till the date of passing this order. Complainant further be entitled to monthly interest of Rs. 11,900/- from the date of passing this order till the date a valid and lawful offer of possession is made.
- (vi) Delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 15,35,520.26/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,24,251.09 /- and Rs 70,440.52/- paid on

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account of EEDC from total paid amount of Rs 17,30,211.90/-. 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 builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest.

- (vii) Lastly, if any lawful dues remain payable by the complainant to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.
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]