



Complaint No. 542 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 542 OF 2021

Ashok Suri

....COMPLAINANTS(S)

VERSUS

BPTP Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing: 4th

Present: Shri Anshul Sharma, Counsel for Complainant through video-conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Counsels for Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

The captioned complaint has been filed by complainant seeking relief of possession of the booked apartment along with interest as applicable as per rules for having caused delay in offering possession.

2. Brief facts as averred by the complainants are that they had booked an apartment in the project 'Park-81' Sector -81, Faridabad, promoted by respondents, on 19.09.2009. An allotment letter dated 20.06.2011 was issued vide which unit No. OM13-03-FF with 1478 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 07.07.2011. In terms of Clause 5.1 of the BBA possession was to be delivered within 36+6 months i.e. by 06.01.2015. Complainant has already paid Rs. 29,64,579.64/- against agreed basic sale price of Rs. 32,66,011/-. The fact of basic sale price of Rs. 32,66,011/- having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-9 to the complaint. In support of the averment that said amount of Rs. 29,64,579.64/- has been paid complainant has annexed a statement of account dated 27.01.2021 issued by respondents to the complainant.

3. Further, it has been alleged by complainant that respondent was supposed to deliver possession by year 2015 but he has not offered it till date. Feeling aggrieved, present complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit along with delay interest.

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. The respondents have admitted payments made by the complainant. The respondents however submit as follows: -

- (i) That possession of booked apartment has been delayed on account of force majeure conditions which mainly relates to delayed approval of their plans by the departments concerned of the State Government. Delay was due to reasons beyond the control of the respondent.
- (ii) Since the unit in question is being constructed over plot area measuring 137.13 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 5.5 of the agreement it was duly agreed that in case respondent fails to handover possession within the stipulated time period, compensation @ Rs. 5 will be given to the complainant for every month of delay.
- (iv) With respect to construction, it is submitted that construction is going on in full swing and respondent is making every possible endeavour to handover the unit shortly.

5. During the course of hearing today the Id. Counsel of both parties reiterated their written submissions and complainant has prayed for relief as cited in para 3 above.



6. Authority has gone through written submissions made by both the parties as well as have carefully examined their oral arguments. It observes and orders as follows: -

(i) Basic facts of the matter are undisputed that the apartment was booked by the complainant on 19.09.2009 and Builder-Buyer Agreement was duly executed and complainant has made payment of Rs. 29,64,579.64/- to the respondents. Respondent in their reply has stated that construction is going on in full swing but possession has not been offered to the complainant till date.

(ii) There is no denial to the fact of Rs. 29,64,579.64/- having been paid by the complainant to the respondents. Respondent has also admitted this payment in the statement of accounts issued by respondent dated 27.01.2021. (Annexure C-19 of complaint). Payment of an amount of Rs. 23,62,070.55/- 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 C-6, C-10-C-16.

(iii) Regarding the argument of respondent that this Authority does not have the jurisdiction to deal with the complaint relating to plots measuring 500 Sq. yds., it is observed that the respondent is developing a larger colony over the several acres of land. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the

developers. The argument of the respondent is that since the plot does not exceed 500 Sq. yds. Therefore, the Authority has no jurisdiction is totally untenable and unacceptable. Promoter is a developer of a large project and this plot is one part of the large number of plots. Jurisdiction of the Authority extends to entire project and each plot of the said project.

(iv) The Authority observes that the respondent has severely misused its dominant position. They executed the BBA in the year 2011. Due date of possession was January 2015. Now, even after lapse of 7 years respondent is not able to offer possession to the complainant. Respondent has not even specified as to when respondent will be in a position to handover possession of booked apartment. Complainants however are interested in getting the possession of their apartment. They do not wish to withdraw from the project. In the circumstances, the provisions of Section 18 of the Act clearly come into play by virtue of which while exercising option of taking possession of the apartment the allottee can also demand, and respondent is liable to pay, monthly interest for the entire period of delay caused at the rates prescribed.

Admittedly, the respondent in this case has not made any offer of possession to the complainant till date nor he has obtained the occupation certificate of the project in question. So, the Authority has no hesitation in concluding that the complainant is entitled for the delay interest from the

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deemed date i.e., 06.01.2015 to the date on which a valid offer is sent to her after obtaining occupation certificate.

A difficulty however is being faced by the Authority that parties have produced receipts of only Rs. 23,62,070.55 paid from the year 2009 up to year 2017. Obviously more money has been paid as has been shown by the respondent in their statement of accounts received to the complainant in 2021 showing that an amount of Rs. 29,64,579.64/- stand received from the complainants. The Authority, therefore, is calculating the delay interest for an amount of Rs. 20,25,215.87 (after subtracting amount of EDC/IDC, EEDC and VAT) paid up to the deemed date of possession from 06.01.2015 up to 09.03.2022 i.e., the date of passing this order. For this period delay interest works out to Rs. 13,50,925/-.

Interest on the amount over and above Rs. 20,25,215.87/- as shown in the statement of the year 2021 is being calculated from the year 2021 till date on an amount of Rs. 5,52,064.17/- (after deducting EDC/IDC amounting to Rs. 50,444.92. It works out to Rs. 57,520/-

Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 14,08,445/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 25,77,280.04/- monthly interest of Rs. 19,974/- 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 25,77,280.04/-. Said total amount has been worked out after deducting VAT amounting to Rs 30102/-, EDC/IDC amounting to Rs 2,26,342.60/- and EEDC amounting to Rs. 1,30,855/- from total amount of Rs 29,64,579.64/- 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.

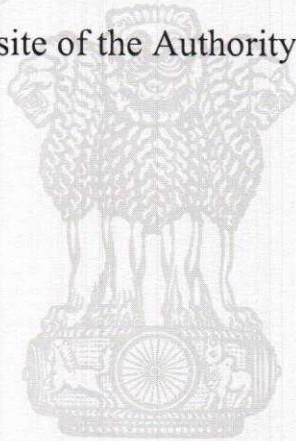
Further, it is made clear that an opportunity for submitting remaining receipts has already been given to the complainant vide email dated 08.04.2022



and complainant has still failed to submit his receipts. Review of this order shall not be allowed in future on any such ground.

7. The Authority further orders that while upfront payment of Rs. 14,08,445/- as delay interest shall be made within 90 days of uploading of this order on the website of the Authority as per Rule 16, the monthly interest of Rs. 19,974/- will commence w.e.f. 10th March, 2022, payable on 10th April 2022 onwards.

Disposed of in above terms. File be consigned to record room after uploading order on the website of the Authority.




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RAJAN GUPTA
(CHAIRMAN)


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DILBAG SINGH SIHAG
(MEMBER)