



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 674 OF 2020

Sugan Singh Dhanwantri

....COMPLAINANTS(S)

VERSUS

BPTP Ltd. & Others.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 08.03.2022

Hearing: 11th

Present: Shri Y.D Kaushik, Counsel for the Complainant.

Shri Hemant Saini and Shri Himanshu Monga Counsel for the respondent through video-conferencing.

ORDER: (RAJAN GUPTA-CHAIRMAN)

Captioned complaint has been filed by the 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 the original allottee Ms. Nirmal Sehgal executed a floor buyer agreement with respondent

on 17.08.2010 for an independent residential floor bearing no. P8-14-GF admeasuring super area of 1203 sq. ft in the project "Park Elite Floors" Faridabad. Deemed date of possession as per agreement was 24 months from the date of execution of agreement or on completion of 35 % basic sales price, whichever is later, after adding grace period of 180 days. Present complainant Mr. Sujan Singh Dhanvantri purchased said floor from original allottee vide transfer letter dated 05.07.2013 after paying an amount of Rs. 1,45,357/- as transfer fee to the respondent. Complainant has already paid Rs. 27,85,862.64 against agreed basic sale price of Rs. 22,37,003/-. The fact of basic sale price of Rs. 33,63,006/- having been agreed between the parties is supported 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 that said amount of Rs. 27,85,862.64/- has been paid, the complainant has annexed a statement of accounts dated 25.11.2016 issued by the respondent. Despite lapse of agreed time period for delivery of apartment, respondents have still not offered possession to the complainant.

3. Further facts of the matter are that Complainant wrote many letters to the respondent for handing over possession of his unit but respondent has not cared to reply or fulfil his obligations. Thereafter a legal notice dated 13.03.2019 was sent by complainant to respondent. Complainants are seeking

relief of possession of booked apartment and payment of admissible delay interest.

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. The respondent however submits as follows: -

- (i) Since the unit in question is an independent floor measuring 209.03 sq. mtrs. As per section 3(2)(a) of RERA Act, registration of the project was not required, therefore it does not fall within jurisdiction of the Authority.
- (ii) That provisions of RERA Act do not apply on the agreement executed prior to coming into force of the RERA Act. The respondents have argued that agreements executed prior to commencement of RERA Act, 2016 should be dealt with in terms with clauses of the said agreement.
- (iii) Customers of the project have defaulted in making timely payment of their instalments thereby contributing to the delay in completion of the project. Previous allottees of the present unit had defaulted in paying instalments.
- (iv) With respect to reasons for delay in completion of the project it has been submitted that respondent had accepted the booking of this unit under self-certification policy which provided that any person could construct building in licensed colony by applying for approval of building plans to the director and in



case of non-receipt of any objection within the stipulated time, the construction could be started. It was not clear whether the policy is applicable to individual plot owners only and excludes the developer/promoter. On 08.07.2015 it was clarified that policy applies to developers as well. Delay has been occurred due to inaction on the part of govt. agencies.

(v) With respect to construction, it is submitted by the respondent that construction at the site is going on in full swing and unit is nearing completion and its possession will be offered to the complainant soon.

(vi) Complainant has misrepresented facts of this case before the Authority. According to respondent, previous allottee Mr. Teerthanker Ganguly applied for allotment in the respondent's project Park Elite Floors on 05.06.2009 and allotment was done in his favor on 24.12.2009. Original allottee executed an agreement to sell with Smt. Nirmal Sehgal (the second allottee) on 25.05.2010. Nomination was done by respondent in favor of second allottee on 27.05.2010. Floor buyer agreement was executed between the second allottee and respondent on 17.08.2010. Thereafter, second allottee executed an agreement to sell with the present complainant Mr. Sugan Singh Dhanvantri (third allottee) on 28.06.2013. Accordingly, present complainant is the third allottee of independent residential floor bearing no. P8-14-GF.



(vi) Complainant, at the time of transfer of the unit was aware about the terms and conditions of the agreement, possession timeline of the unit and status of the project. Second allottee had made defaults in making payments. Complainant was duly informed about the status of construction through various e-mails.

5. During the course of hearing today the Id. Counsel of complainants reiterated their written submissions as already discussed in para 1 to 4 in this order. Ld. counsel for the respondent in addition to his written statement stated that the respondent company is ready to refund the amount paid by the complainant along with interest.

6. In the ninth hearing of this case dated 30.11.2021 arguments in regard to rate at which delay interest would be applicable were heard. It was decided by the Authority that delay interest as per Rule 15 will be admissible. Operative part of the said order is being reproduced below:


“On perusal of record it is revealed that complainant has already filed his calculations of interest as per Rule 15 of HRERA, Rules 2017 on 22.04.2021. Mere usage of some words does not disentitle the complainant from claiming interest as per Rule 15 of HRERA Rules, 2017 which is his statutory right, and therefore complainant is allowed to claim interest as per Rule 15 that is SBI MCLR+2%.”

7. 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) Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to floor 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 floor 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 floor is one part of the large number of floors. Jurisdiction of the Authority extends to entire project and each plot of the said project.

(ii) 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 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 in 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.

(iii) Deemed date of possession as specified in the agreement is 24 months from the date of execution of agreement or on completion of 35 % basic sales price whichever is later after adding grace period of 180 days. Date of agreement was 17.08.2010 and the date till which 35 % basic sales price was paid till



24.02.2010. Later date is the date of execution of agreement which is 17.08.2010 and after adding grace period of 180 days deemed date of possession works out to be 16.02.2013.

(iv) Admittedly the builder buyer agreement was executed between the parties on 17.08.2010 and deemed date of possession was 16.02.2013. Respondent issued the nomination letter in favor of the present complainant on 05.07.2013. 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. Authority is of view that respondent failed in his duty to deliver possession within the stipulated time and today also he is not in a position to handover the possession of the booked unit as construction work is still going on. For the fault of respondent, complainant should not suffer so it is decided that respondent should pay upfront delay interest along with monthly interest till the date on which a valid offer is sent to him after obtaining occupation certificate.

(iv) Delay interest- Complainant has not annexed any receipt of payment and is relying on statement of accounts dated 25.11.2016. An email dated 8 April 2022 was sent to the complainant for submission of payment receipts by the complainant. In response to the said email complainant has sent a reply stating that amount of Rs. 27,75,450/- be taken from nomination letter dated 5.07.2013



annexed at page 66 of reply. He has also filed a statement of account dated 05.02.2020 which specifies the amount paid to be rupees 29,65,790.16/-.

On perusal of statement of accounts submitted by the complainant dated 05.02.2020 it is revealed that the said statement pertains to a different person namely Kaplish Aneja and it relates to a different unit. Such act of Id. counsel for the complainant in filing a misleading and wrong document is not acceptable.

In the absence of receipts Authority will decide the case on the basis of best evidence placed on record by the complainant. Delay interest on the amount of Rs. 27,75,450/- will be calculated from the date of nomination letter that is 05.7.2013 till the date of order and on the remaining amount of Rs. 10,412.64/- interest will be calculated from the date of statement of accounts dated 25.11.2016 till the date of order. Complainant has also paid VAT of Rs. 28,563/- on 30.11.2016. This amount is not taken for calculating delay interest for the reasons mentioned in the succeeding paragraphs.

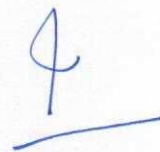
Accordingly, the respondent is liable to pay the upfront delay interest of Rs.20,30,747/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 25,20,689.05/- monthly interest of Rs. 19,535/- shall be payable up to the date of actual handing 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.

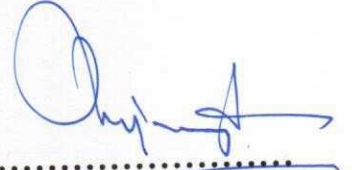
The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 25,20,689.05/-. Said total amount has been worked out after deducting EDC and IDC amounting to Rs 1,67,344.17/-, EEDC amounting to Rs. 97,829/- from total amount of Rs 27,85,862.64/- paid by complainant. These amounts 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 receipts has already been given to the complainant vide email dated 08.04.2022 and complainant has still failed to submit any such receipt. Review of this order shall not be allowed in future on any such ground.



8. The Authority further orders that while upfront payment of Rs. 20,30,747/- as delay interest shall be made within 90 days of uploading of this order on the website of the Authority, the monthly interest of Rs. 19,535/- will commence w.e.f. 10.03.2022, payable on 10.04.2022 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)

