



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 826 of 2020

Jai Prakash Jain

....COMPLAINANT(S)

VERSUS

M/s BPTP Ltd

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing:

4th

Present: -

Mr. J.P. Jain, Complainant through VC.
Mr. Hemant Saini, 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 as per rules for having caused delay in offering possession.

2. Brief facts as averred by the complainant are that original allottees named Sh. Manoj Yadav and Smt. Neera Yadav had booked an apartment in an under

construction project 'Park Elite Floors', sector -84, Faridabad, promoted by the respondents on 29.05.2009 by paying Rs 1.5 lacs. An allotment letter dated 24.12.2009 was issued vide which unit No. H-4-12A-SF with 1022 sq. ft. area was allotted to original allottees. Builder Buyer Agreement between original allottees and respondent was executed on 26.06.2010. In terms of Clause 4.1 of the BBA, possession was to be delivered within 24+6 months i.e. by 26.12.2012. Complainant had purchased allotment rights of unit from original allottees on 15.03.2013. An amount of Rs 23,18,035.23/- has already been paid against agreed basic sale price of Rs 20,55,999/-. Fact of basic sale price of Rs. 20,55,999/- having been agreed between the parties is duly supported by the Builder Buyer Agreement executed between the parties and same has been annexed as Annexure-3 to the complaint. In support of the averment of payment of Rs. 23,18,035.23/- the complainant has annexed statement of account dated 13.08.2020 and receipts of only Rs 15,69,853.68/- alongwith receipt of transfer fee of Rs 1,19,787/- + Rs 2578/- issued by the respondents to the complainant. The copies of said receipts and statement of accounts have been made part of the complaint and annexed at pg no. 73-88 of complaint.

3. Further it has been alleged by the complainant that respondent was supposed to deliver possession by year 2012 but no offer has been made till date. Feeling aggrieved, present complaint has been filed by the complainant seeking



direction against the respondent to deliver possession of booked unit alongwith delay interest.

4. Respondents in their reply have admitted the allotment of booked unit and execution of builder buyer agreement in favour of the complainant. Besides, respondents have not denied the payment of Rs 23,18,035.23/- made by the complainant. Respondents however submitted following pleadings in their reply:-

- (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) Completion of the project has been delayed on account of certain force majeure conditions.
- (iv) Regarding possession of unit, it has been stated in para G of reply that construction is going on in full swing and possession of the unit will be handed over shortly.
- (v) Regarding issue of delay interest, it has been submitted that an undertaking had been signed by complainant on 21.02.2013, copy of it is annexed as Annexure R-5 of reply whereby it has been written that

complainant should not hold liable respondent company for any delay in offer of possession, if that delay is due to any act on account of changes, modifications, revisions in the tentative layout/building plan during construction of the unit.

5. During the course of hearing today, complainant reiterated his written submissions and prayed for relief as cited in para 3 above.

6. Respondents on the other hand stated that the construction work of the unit has been 75% completed and an offer of possession would be made soon after completion of the project.

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) Basic facts of the matter are undisputed that the apartment was booked by the original allottees on 29.05.2009 and Builder-Buyer Agreement was duly executed and complainant has made payment of Rs. 23,18,035.23/- to the respondents, which is adequately proved from the statement of accounts dated 13.08.2020 annexed at page 88 of complaint. The respondents had not offered possession of unit till date as construction work is still going on.
- (ii) Arguments in respect of force majeure conditions cannot be accepted and no such conditions have been shown to be applicable. Nothing

extraordinary conditions have taken place between the date of executing the BBA and due date of offer of possession which proved force majeure.

- (iii) Respondent has further argued that complainant had signed an undertaking dated 21.02.2013 not to hold liable the respondent for any delay caused in delivery of possession. Further, Learned counsel for the respondent argued that allottee himself has given an undertaking that he will not hold respondent responsible for any delay in offer of possession caused due to any act on account of any changes, modifications, revisions in the tentative lay out building plans during construction/completion of the floor. In this regard, it has been observed that in this case delay of more than 10 years has already taken place and complainant who had already paid more than basic sale price is still waiting to have possession of his unit. The Authority observes that firstly it has not been demonstrated by respondents by placing any document showing that the delay has occurred due to change of layout plans etc therefore the undertaking will not come into play at all. Secondly, said undertaking is vague and unconscionable and one sided. It was got signed after the allottee had paid about 100% of the basic sale price. After payment of substantial amount, allottees had left with no choice but to sign the documents as were presented to them by

the respondent company. The Authority, therefore, is of considered view that said undertaking would have no effect for mitigating the liability of respondents towards allottee for delay caused in handing over the possession.

- (iv) 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.

- (v) Factual position reveals that respondent was supposed to handover possession by december,2012 but he had failed in his duty to deliver possession within stipulated time. Even today, respondent is not in possession to deliver possession of booked unit as it has been mentioned in para G of his written statement that construction work is still going on in full swing and possession will handed over soon. No specific time limit has been provided by respondent. Complainant in this case was initially seeking refund of paid amount but later on vide application dated 15.11.2021 has amended his relief sought from refund to possession with delay interest. An opportunity to the respondent was provided to file his amended reply vide order dated 25.11.2021 but said reply has not been filed till date. It is observed that respondent has

chosen not to file amended reply despite availing sufficient time for it, but said application stands allowed.

- (vi) In furtherance of aforesaid observations, respondent is directed to send a valid offer of possession to the complainants after receipt of occupation certificate. They should also issue them a fresh statement of account which lawful and justified demands as per Builder Buyer Agreement may 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. Further it is observed that complainant's right to get delay interest will continue till he receives proper and lawful offer of possession duly supported with occupation certificate.
- (vii) Complainant has attached statement of accounts dated 13.08.2020 as proof of paid amount of Rs 23,18,035.23/- in their complaint and receipts of Rs 15,69,853.68/- are attached with complaint. So, an e-mail dated 08.04.2022 was written to the complainant to submit the receipts of balance payments so as to verify the date with such payments were made to enable the Authority to calculate the payable interest thereon. The complainant has not provided receipts of the balance amount. So, the amount of 7,48,181.55/- of which the receipts have not been submitted, the interest is being calculated from the date of issuance of the statement of accounts dated 13.08.2020.

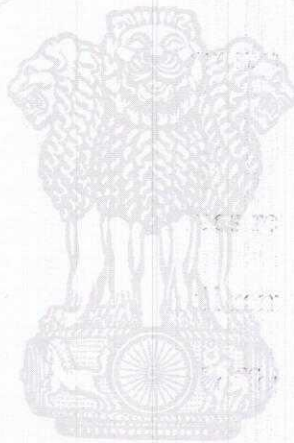
(viii) A delay of more than 10 years has already been caused. This fact of inordinate delay having been caused entitles the complainant to upfront payment of delayed interest amounting to Rs. 12,64,156/- within a period of 90 days from uploading this order. This delay interest has been calculated from the Accounts Department of the Authority for the period from the due date of possession till the date of passing this order i.e 26.12.2012 to 09.03.2022. The complainants will further be entitled to monthly interest of Rs. 15,755/- from the date of passing this order till the date a valid and lawful offer of possession is made.

(ix) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 20,32,839.98/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,63,739.16/-, Rs 23,627/- on account of VAT and Rs 97,829.09/- paid on account of EEDC from total paid amount of Rs 23,18,035.23. 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 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 collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

- (x) 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]