



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 745 OF 2021

Mohd. Mubeen

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing: 2nd

Present: Shri Rohit Rana, Counsel for the complainant.
Shri Hemant Saini and Shri Himanshu Monga, Ld. counsels for the Respondent.

ORDER: (RAJAN GUPTA-CHAIRMAN)

The 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 they had booked an apartment in the project 'Park-81' Sector -81, Faridabad, promoted by the respondents on 27.09.2009. An allotment letter dated 16.03.2010 was issued vide which unit No. VL1-18-GF with 1402 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 11.04.2012. In terms of Clause 5.1 of the BBA possession was to be delivered within 36+6 months i.e. by 10.10.2015. Complainant has already paid Rs. 31,34,134/- against agreed basic sale price of Rs.33,63,006/-. 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-2 to the complaint. In support of the averment that said amount of Rs. 31,34,134/- has been paid, the complainant has annexed receipts of an amount Rs. 30,33,249.83/- as annexure C-3 issued by respondents to the complainant.

3. Further facts of the matter are that respondents vide e-mail dated 31.05.2016, annexed as annexure C-4, informed complainant that possession will be handed over by third quarter of 2018. Further vide another e-mail dated 17.03.2021 respondent informed that possession will be offered by third quarter of 2021 but no possession has been offered to him till date. 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 respondents have denied the payments made by the complainant. The respondent however submits as follows: -

(i) That possession of booked apartment has been delayed on account of force majeure conditions.

(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) Complaint is barred by limitation, laches and estoppel. Complainant is raising issues pertaining to acts and actions of the respondent which are covered by terms of agreement. Complainant booked the unit in 2009 and made the payments as per the demands. He is now estopped from raising these issues.

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

6. Ld. counsel for the respondent submitted that project is complete. They had applied for grant of occupation certificate on 12.10.2021 and it is the State Government authorities who are delaying grant of occupation certificate.



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 complainant on 27.09.2009 and Builder-Buyer Agreement was duly executed. Complainant alleges that he has made payment of Rs. 31,34,134/- to the respondents but he has annexed receipts of only Rs. 30,33,249.83/-. The respondents have submitted that their project is complete and occupation certificate has been applied for on 12.10.2021.

The respondents have not cited any reason as to why the 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 the 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 such deficiencies, no liability can be cast upon the complainants. Complainants are entitled to completed and duly certified apartments.

(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.

(ii) Respondent has denied to the fact of Rs. 31,34,138/- having been paid by the complainant to the respondents. Complainant has alleged that an amount of Rs. 31,34,138/- has been paid by him however receipts of only Rs. 30,33,249.83/- have been annexed by him as annexure C-3. He has also annexed interest calculation sheet at page 77 of the complainant in which it is written that an amount of Rs. 1,00,890/- was paid by him on 28.12.2009 but no proof of the same has been annexed. Accordingly, respondent's denial of having received the amount is without any basis.

An e-mail dated 08.04.2022 was written to the complainants 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 complainants have not submitted the remaining receipts.

(iii) A delay of 7 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. 15,94,897/- within a period of 90 days from uploading 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 i.e 10.10.2015 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. 20,723/- from the date of passing this order till the date a valid and lawful offer of possession is made.

(iv) The delay interest mentioned in aforesaid paragraph is calculated on the amount of Rs 26,73,873.54/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 2,13,669.02/-, Rs 1,18,346.27/- paid on account of EEDC and Rs. 27,361/- paid on account of VAT from total paid amount of 30,33,249.83/-. 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.



(v) 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)

