



Complaint no. 166 of 2021

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 166 of 2021

Surender Kumar Bansawal and Manju SubberwalCOMPLAINANT(S)

VERSUS

1. M/s BPTP Ltd

2. New Age Town Planners Ltd

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 09.03.2022

Hearing-

5TH

Present: -

Ms. Srishti Girdhar, Counsel for the complainant.
Mr. Hemant Saini, Counsel for the respondent.

ORDER (RAJAN GUPTA-CHAIRMAN)

The captioned complaint has been filed by the complainants seeking relief of possession of the booked apartment along with interest as applicable as per rules for having caused delay in offering possession and also quashing certain allegedly illegal demands raised by respondents.

2. Brief facts as averred by the complainants are that they had booked an apartment in an under construction project 'Park Elite Floors', sector -75, Faridabad, promoted by the respondents, on 09.08.2009. An allotment letter dated 24.12.2009 was issued vide which unit No. P-07-B-FF with 1418 sq. ft. area was allotted to the complainants. Builder Buyer Agreement was executed on 05.03.2010. In terms of Clause 4.1 of the BBA possession was to be delivered within 24+6 months i.e. by 05.09.2012. Complainants have already paid Rs. 33,20,189/- against agreed basic sale price of Rs.25,56,002/-. The fact of basic sale price of Rs. 25,56,002/- 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. 33,20,189/- has been paid the complainant has annexed a statement of account dated 12.12.2019 issued by the respondents to the complainant. The complainants have, however, not submitted receipts of having made such payments. The said statement of accounts has been made part of the complaint and annexed as Annexure C-3.

3. Further facts of the matter are that respondents offered possession of the booked apartment to the complainant on 23.11.2019. The said offer of possession was conveyed with an additional demand of Rs. 7,22,855.10 /-. The complainant alleges that they did not accept the said offer of possession given by the respondent for the reasons of wrongful additional demand of Rs. 7,22,855.10 /- made by the respondents; and also that the offer was without obtaining occupation

certificate of the building from authorities concerned of the State Government. Further, the respondent had not incorporated the interest payable to them for having caused delay of more than six years in offering possession. Complainant alleges that interest for such period of delay is admissible in terms of section 18 of the RERA Act. Complainants are seeking relief of possession of booked apartment, quashing of illegal demands, 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 not denied the 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 the delayed approval of their plans by the departments concerned of the State Government.
- (ii) The respondents have denied the averments made by complainants in general terms, inter-alia alleging mis-joinder of parties.
- (iii) 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.
- (iv) In this particular case respondent are alleging that complainants had defaulted in making due payments which were conveyed to them along



with offer of possession dated 23.11.2019 and for that reasons had terminated the unit on 31.10.2020 after issuing reminders dated 10.12.2019, 02.04.2020, 02.05.2020 and 06.05.2020.

(v) The respondents had applied for grant of Occupation Certificate in December, 2019 which is yet to be received.

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. The respondents on the other hand stated that the project is complete. They had applied for grant of occupation certificate in December, 2019 and it is the State Government authorities who are delaying grant of occupation certificate. The project is ready to be occupied. Further, additional demands made by respondents are fully justified. The respondents have issued 4 reminders to the complainants to make payments, but they failed to do so therefore respondents have rightfully terminated the allotted unit of complainant on 31.10.2020.

Sh. Hemant Saini, learned counsel for the respondents further argued that respondents are ready to refund entire payment made by the complainants if the complainant is not interested in taking the unit. He further argued that this is a completed project but State Government authorities are delaying grant of occupation certificate. The respondents are ready to offer possession of the allotted unit or alternatively they are ready to refund the money paid by complainant along with interest.

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 09.08.2009 and Builder-Buyer Agreement was duly executed and complainant has made payment of Rs. 33,20,189/- to the respondents. The respondents had issued an offer of possession on 23.11.2019 but without obtaining an occupation certificate. The respondents alleged that they had applied for grant of occupation certificate in December, 2019 but the same has yet not been granted.
- (ii) 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 last 3 years. For such deficiencies, no liability can be cast upon the complainants. Complainants are entitled to completed and duly certified apartments.

9

(iii) Authority is of the view that receipt of occupation certificate is an important milestone in the life span of a project. The occupation certificate establishes that the building has been constructed in accordance with the approved plans and norms. It further proves that all legal formalities are complete in respect of the project and no hindrance or liability will be faced by the allottees. It also proves that requisite certificates like fire safety, structural safety certificates, electrical plans etc. have been obtained.

Other side of the proposition is that none of the aforesaid statutory conditions are certified to have been fulfilled if an occupation certificate has not been received. Without such a certificate, there is no guarantee that the rights of the allottees shall be fully safeguarded and they will not face any problem in getting conveyance deed executed in their favour.

Allottees however may choose to take possession of an apartment which has not yet received occupation certificate at their own will, choice or risk, but an allottee cannot be forced to occupy an apartment in a project without having received occupation certificate. In other words, it is a choice available to the allottee to accept possession of such apartment or not. The allottee has an inalienable right that his apartment has been certified as fit to be occupied by relevant authorities of the State Government. The allottee is very much within his right to refuse



possession of an apartment in respect of which occupation certificate is yet to be received.

- (iv) Further, consequence of above proposition is that an offer of possession made without obtaining occupation certificate cannot be treated as a good and lawful offer of possession. Accordingly, allottee's right to get delay interest will continue till he receives proper and lawful offer of possession duly supported with occupation certificate.
- (v) Admittedly, in this case occupation certificate has not been received. The respondents on the other hand have offered possession without obtaining occupation certificate and have in addition raised additional demand of Rs 7,22,855.10/- which is being disputed by the complainants. Furthermore, respondents have gone ahead and unilaterally terminated the allotment of apartment of the complainant on 31.10.2020 because of allegedly having not made due payments. Such termination of the allotment is totally unacceptable and is illegal in the eyes of law. After having made payment of Rs 33.20 lacs against agreed basic sale price of Rs 25.56 lacs, respondents could not have terminated the unit. The complainants were not liable to accept the illegal offer of possession and make payment of additional demands without the project having received occupation certificate.
- (vi) 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.

- (vii) The Authority observes that in the event of a project not being completed within reasonable time, a right has been given to the allottees by Section 18 of RERA Act under which the allottee has an option either to seek refund of the amount paid along with interest or to continue with the project for seeking possession, but could demand monthly interest for the entire period of delay. The Authority observes that the right given to the allottee by Section 18 cannot be denied by the Authority. It is only the complainant who by way of compromise with the respondent could arrive at a different settlement, therefore plea of respondent that he is ready to refund the paid amount to complainant with interest cannot be entertained.
- (viii) For the forgoing reasons the Authority quashes the cancellation letter dated 31.10.2020 issued by the respondent whereby allotment of the unit of the complainant was terminated. It also quashes the letter dated 23.11.2019 vide which additional demands have been made because this does not include in it the interest payable to the complainant on account of delay of more than 9 years having been caused in completing the project. In fact, the project is still not complete because it has not yet received the occupation certificate.



- (ix) The respondents are directed to send a fresh offer of possession to the complainants after receipt of occupation certificate. They should also issue them a fresh statement of account in which the lawful and justified demands as per Builder Buyer Agreement could be made. If the complainant feels aggrieved by such statement of account they will be at liberty to approach this Authority by filing a fresh complaint.
- (x) Complainants have only attached statement of accounts dated 12.12.2019 as proof of paid amount of Rs 33,20,189.12/- in their complaint and receipt of Rs 23,31,016/- are attached with written statement of respondent. So, an e-mail dated 05.04.2022 was written to the complainants to submit the receipts of balance payments so as to verify the date when such payments were made to enable the Authority to calculate the payable interest thereon. The complainants have submitted the receipts of the amounts of Rs. 33,09,670.68/-. However, total paid amount is Rs. 33,20,189.12/- as per statement of accounts dated 12.12.2019. So, the amount of 10,518.44/- of which the receipts have not been submitted, the interest is being calculated from the date of issuance of the statement of accounts dated 12.12.2019.
- (xi) A delay of more than 9 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. 24,85,552/- within a period of 90 days from uploading this order. This delay interest has



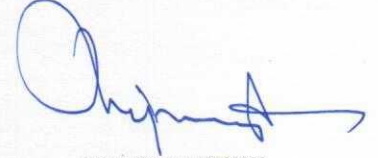
been calculated from the Accounts Department of the Authority for the period from the due date of possession till the date of passing this order i.e 05.09.2012 to 09.03.2022 in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.30%. The complainants will further be entitled to monthly interest of Rs. 23,422/- from the date of passing this order till the date a valid and lawful offer of possession is made.

- (xii) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 30,22,247.81/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,87,438.72/-, Rs 31,586/- on account of VAT and Rs 78,916.59/- paid on account of EEDC from total paid amount of Rs 33,20,189.12/- 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.



(xiii) 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.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
DILBAG SINGH SIHAG
[MEMBER]

