



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 866 OF 2021

Rashmi

....COMPLAINANTS(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 09.03.2022**

**Hearing: 3<sup>rd</sup>**

**Present:** Shri Sudeep Singh Gahlawat, Ld. counsel for the complainant through video-Conferencing.  
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 and also quashing illegal demand of GST raised by respondent.

2. Brief facts as averred by the complainant are that they the original allottees Mr. Rajesh B. Mangla and Mrs. Bindu Mangla booked an apartment in the project 'Park-81' Sector -81, Faridabad, promoted by the respondents on 29.09.2009. An allotment letter dated 20.06.2011 was issued in favour of original allottees. Builder Buyer Agreement was executed between the respondent and original allottees for unit bearing no. OM13-04-FF having super built up area of 1478 sq. ft. on 07.07.2011. In terms of Clause 5.5 of the BBA possession was to be delivered within 42 months i.e., by 07.01.2015. Said unit was endorsed in favour of the present complainant Ms. Rashmi on 29.09.2017. Complainant has already paid Rs. 29,64,084.75/- against agreed basic sale price of Rs. 31,35,371/-. The fact of basic sale price of Rs. 31,35,371/-, having been agreed between the parties is supported by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure P-1 to the complaint. In support of the averment that said amount of Rs. 29,64,084.75/- has been paid the complainant has annexed a statement of account dated 01.09.2020 issued by the respondents to the complainant. The said statement of accounts has been made part of the complaint and annexed at page 57. The complainants have, however, not submitted receipts of having made such payments.



3. Further, it has been alleged by complainant that she has unnecessarily been burdened with GST. Had the respondents delivered the possession on time, the liability of GST would not have fallen on the complainants as GST was implemented on 1.07.2017. 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. The respondents have not admitted payments made by the complainant. The respondents however submit as follows: -

(i) 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.

(ii) That possession of booked apartment has been delayed on account of force majeure conditions. Respondent must be given reasonable extension of time for completion of the construction of the property.

(iii) Respondent denies the basic sales price as averred by the complainant. It is stated that BSP of the unit is tentative and can only be ascertained at the time of

offer of possession. With respect to the averment of complainant of having been paid an amount of R. 29,64,084.75/- it is stated that the said amount is inclusive of timely payment discount amounting to Rs. 1,10,565.80/- and BSP discount of Rs. 1,30,640/-.

(iii) As far as demand of GST is concerned it is stated that as per clause 1.35 complainant had agreed to pay any tax or charges even if applicable retrospectively.

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

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.

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 on 29.09.2009 and Builder-Buyer Agreement was duly executed. Complainant has made payment of Rs. 29,64,084.75/- to the respondents as evident from the statement of account dated



01.09.2020. Respondent in their reply has stated that they may be given reasonable extension of time for completion of construction of the property. However, no construction timeline has been given by the respondent.

(ii) There is denial to the fact of Rs. 29,64,084.75/- having been paid by the complainant to the respondents. Complainant has submitted statement of accounts issued by respondent dated 01.09.2020. (Page 57 of complaint). Payment of an amount of Rs. 29,64,074.85/- is further adequately proved from the statement of accounts issued by the respondents to the complainant dated 13.07.2017. The copy of said statement of accounts has been made part of the complaint and annexed at page 54.

(iii) GST- Admittedly, the delivery of the apartment has been delayed by more than 6 years. Had it been delivered by the due date or even with some justified period of delay, the incidence of GST would not have fallen upon the buyers. It is the wrongful act on the part of respondent in not delivering the project in time due to which the additional tax has become payable. There is no fault of the complainants in this regard. For the inordinate delay by the

respondent in delivering the apartments, the incidence of GST should be borne by the respondent only.

(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 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 deemed date i.e., 07.01.2015 to the date on which a valid offer is sent to her after obtaining occupation certificate.



Complainant has submitted receipt of payment on 30.03.2022. Complainant has paid an amount of Rs. 29,64,084.75/- whereas receipts of Rs. 29,64,074.76/- have been submitted by complainant. For the remaining Rs. 10/-, interest will be calculated from the statement of accounts dated 01.09.2020.

Delay interest on the amount of Rs. 29,64,074.85/- will be calculated from the from the deemed date i.e., 07.01.2015 to the date of order that is 09.03.2022 and on the remaining amount of Rs. 10/- interest will be calculated from the date of statement of accounts dated 01.09.2020 till the date of order.

Accordingly, the respondent is liable to pay the upfront delay interest of 17,18,288/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 25,76,790.85/- monthly interest of Rs. 19,970/- 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. 25,76,790.85/- Said total amount has



been worked out after deducting VAT amounting to Rs 30,097/-, EDC/IDC amounting to Rs 2,26,342.60/- and EEDC amounting to Rs. 1,30,855/- from total amount of Rs 29,64,084.85/- 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.

7. The Authority further orders that while upfront payment of Rs. 17,18,288/- 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. 19,970/- will commence w.e.f. 10<sup>th</sup> March, 2022, payable on 10<sup>th</sup> 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)**

