



Complaint no. 636/2021

# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

**COMPLAINT NO. 636 of 2021**

Pankaj Gupta

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 05.05.2022**

**Hearing-5<sup>th</sup>**

**Present: -** Mr. Denson Joseph, Ld. Counsel for the complainant through VC  
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the  
respondent.

## **ORDER (DILBAG SINGH SIHAG-MEMBER)**

Complaint in question has been filed by the complainant seeking relief of possession of the booked apartment along with interest as applicable under rules on account of delay in offering possession and further justification of increase in area of unit from 876 to 1040 sq ft.

2. Brief facts as averred by the complainant are that an original allottees named Gulshan Batra and Meenu Batra had booked an apartment in an under construction project 'Park Elite Floors', sector -75, Faridabad, promoted by the respondents on 21.05.2009 by paying Rs 2 lacs. Allotment rights of unit was purchased by the complainant on 27.11.2009. An allotment letter dated 24.12.2009 was issued vide which P-08-19-SF with area of 876 sq ft was allotted to him. Builder Buyer Agreement was executed on 14.02.2013. In terms of Clause

*l*

4.1 of the BBA, possession was to be delivered within 24+6 months i.e. by 14.08.2015. An amount of Rs.18,68,655.71/- has already been paid against agreed basic sale price of Rs.16,08,004/-. Fact of basic sale price of Rs. 16,08,004/- having been agreed between the parties is endorsed by the Builder Buyer Agreement executed between the parties which has been annexed as Annexure C-3 to the complaint. In support of the averment of amount of Rs.

18,68,655.71/- complainant has annexed payment receipts as Annexure C-6 of complaint. Present complaint has been filed by the complainant seeking direction against the respondent to deliver possession of the unit alongwith delay interest apart from justification of increase in super area from 876 to 1040 sq ft.

3. Respondents in their reply have admitted allotment of booked unit in favour of the complainant and execution of Floor Buyer Agreement while submitting following pleadings:-

- (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) Regarding issue of increase in area from 876 sq ft to 1040 sq ft it has been submitted that said increase is in consonance with terms of builder

buyer agreement and complainant has already paid Rs 3,97,700/- for it on 13.05.2013.

(iv) Regarding possession, it has been stated that construction of the unit is going on in full swing and possession will be handed over shortly.

4. During the course of hearing today, Sh. Denson Joseph, Id. Counsel of complainant reiterated his written submissions and prayed for relief as cited in para 2 above. He further argued that his client is not satisfied with the increase in area since no justification was given by the respondent promoter in this regard. Therefore, the responsibility must be cast upon respondent to prove that area has been actually increased. Sh. Hemant Saini, Id. counsel for the respondents argued that respondents are ready to allot alternate unit in completed project if complainant is ready to shift. Complainant rejected such proposal by insisting upon relief prayed in complaint only.

5. Authority has gone through written as well as oral submissions made by both parties while passing following orders:-

(i) Basic facts of the complaint are all undisputed regarding allotment of unit to the complainant on 24.12.2009 and execution of Builder-Buyer Agreement between the parties on 14.02.2013. Apart from payments made by complainant, no possession has been offered by respondent till date. Even after lapse of 7 years version of respondent that construction

R

was going on in full swing and possession will be handed over shortly to complainants.

- (ii) As far as the averments of respondents that provisions of the RERA Act will not apply on the agreements executed prior to coming into force of RERA Act, 2016 is concerned, respondents have argued that relationship of builder and buyer in this case would be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act.

In this regard, Authority observed that after coming into force the RERA Act, 2016, jurisdiction of the Civil Court has been barred by Section 79 of the Act *ibid*. Authority, however, has been 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 principle view that relationship between builders and buyers should be strictly regulated by terms and conditions of agreement, however, there was a difference of view with majority two members on one side and the Chairman on the other with regard to the rate at which interest will be payable for the period of delay caused in handing over of possession. 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.'

However, 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) For the forgoing reasons it is decided by the Authority that the complainant who has been waiting for last 7 years to get possession of unit should not suffer anymore on account of default on the part of respondent and very much entitled to be paid interest for the delay period from the deemed date of possession till handing over of possession that too only after receipt of occupation certificate as per principles laid down in complaint no. 113/2018 Madhu Sareen vs BPTP Pvt Ltd in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2% (9.3%) for the period ranging from 14.08.2015 (deemed date of possession) to 05.05.2022. Further, monthly interest shall also be payable upto the date of actual handing over of the possession as and when respondent gets occupation certificate.
- (iv) A delay of more than 7 years has already been caused. This inordinate delay entitled the complainant to get upfront payment of delayed interest and monthly interest for further delay. Authority found while examining the records that complainant claimed for payment of an amount of Rs 18,68,656.99/- whereas receipts of Rs 18,58,664.8/- are

available in complaint file. Complainant is directed to submit receipt of remaining amount of Rs 9,992.19/- on next date of hearing.

- (v) Lastly not least, in order to resolve the issue of increase in area from 876 sq ft to 1040 sq ft, Authority decided that joint site visit of both parties be conducted at the site on 27.05.2022. Respondent is directed to facilitate the said visit. He shall also provide copy of approved building plans and shall carry out the measurement of area of booked unit in the presence of complainant so as to satisfy with the alleged increased area. Further it is observed that increase in area is justified only if they have been done in accordance with the approved building plans and fully met with the principles as decided in complaint no. 607/2018 Vivek Kadyan vs TDI Infratsrcutre Pvt Ltd. So, the respondent on the next date shall bring original plan and revised plan alongwith details of calculation of each component of the booked area showing details of increased area.
- (vi) With these directions, the case is adjourned to 14.07.2022.

  
.....  
**RAJAN GUPTA**  
[CHAIRMAN]

  
.....  
**DILBAG SINGH SIHAG**  
[MEMBER]