



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 394 of 2021

Anju Kapoor & Pardeep Kapoor

VERSUS

....COMPLAINANT(S)

M/s BPTP Pvt Ltd

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 07.04.2022

Hearing: 5th

**Present: -Mr. Arjun Kundra, Ld. Counsel for the complainant
Mr. Hemant Saini & Mr. Himanshu Monga, Ld. Counsel for the
respondent**

ORDER (DILBAG SINGH SIHAG-MEMBER)

Captioned complaint has been filed by the complainant for seeking relief of possession of the booked apartment along with permissible interest for delay in offering possession.

2. Brief facts as averred by the ld. counsel of the complainants are that they had booked an apartment in an under construction project 'Park Elite Floors',

sector -77, Faridabad, being promoted by the respondents on 15.06.2009 by paying an amount of Rs 2,00,000/-. An allotment letter dated 06.10.2011 was issued mentioning unit No. PE-145-SF having 1510 sq. ft. area. Builder Buyer Agreement was executed on 10.02.2012. In terms of Clause 5.1 of the BBA, possession was to be delivered within 24+6 months i.e. by 10.08.2014. Complainants have already paid Rs. 28,43,713/- against agreed basic sale price of Rs 27,79,095 /-. The fact of basic sale price of Rs. 27,79,095 /- having been agreed between the parties is supported 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 payment of said amount of Rs. 28,43,713.54/-, complainant has annexed receipts issued by the respondents to him. Copies of receipts have been made part of the complaint and annexed as Annexure C-4.

2. Further it has been alleged by ld. counsel of the complainant that respondent was supposed to deliver possession by year 2014 but the same has not been offered till date. Feeling aggrieved, present complaint has been filed seeking direction to the respondent to deliver possession of unit alongwith permissible delay interest.

3. Respondents in their reply have admitted allotment of booked unit and execution of Floor Buyer Agreement in favour of the complainants. Averments made by the respondents in their reply are summarised 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) 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) With regard to delay of handing over of possession, it has been stated that construction of the unit is seventy percent complete and possession will be handed over shortly.

5. During the course of hearing today Sh. Arjun Kundra, Id. Counsel of complainants reiterated their written submissions and prayed for relief as cited in para 3 above. Sh. Hemant Saini, Id. counsel for the respondents on the other hand argued that respondents were ready to allot alternate unit in completed project if complainants are ready to shift. However, complainants refused to accept the proposal rather insisted upon relief prayed in complaint only.

6. Authority has gone through written submissions as well as verbal submissions put forth by both the parties and also examined their documents while passing following orders:-

- (i) Basic facts of the matter are admitted with regard to allotment of unit on 22.05.2009 and execution of Builder-Buyer Agreement between the



parties on 10.02.2012. Possession of booked unit has not been offered by respondent till date. Respondent said that construction was going on in full swing and possession would be handed over shortly to the complainants.

- (ii) There is no denial to the fact of Rs. 28,43,713.54/- having been paid by the complainant to the respondents. Payment of this amount is further adequately proved from the receipts issued by the respondents to the complainant. The copy of said receipts has been made part of the complaint and annexed as Annexure C-4.
- (iii) 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 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 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. Authority has already decided hundred of cases in same terms.

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, Nevertheless, 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. 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, 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.

- (iv) In view of forgoing reasons it is decided by the Authority that complainants who have been waiting for last 9 years to have possession of unit should not suffer anymore on account of default on the part of respondent and are entitled to be paid interest on account of the delay caused therein from the deemed date of possession till handing over of possession that too 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 10.08.2014 (deemed date of possession) to 07.04.2022. Further, monthly interest shall also be payable upto the date of actual handing over of the possession after obtaining occupation certificate.

- (v) A delay of more than 9 years has already been caused. This fact of inordinate delay having been caused entitles the complainants to upfront payment of delayed interest amounting to Rs. 16,38,756/- within a period of 90 days from uploading of this order. This delay interest has been got calculated from the Accounts Department of the Authority from due date of possession till the date of passing this order. Complainants will further be entitled to monthly interest of Rs. 18,842/- from the date of passing this order till the date a valid and lawful offer of possession is made to the complainants.
- (vi) The delay interest mentioned in aforesaid paragraph got calculated on an amount of Rs 24,31,261.34/-. Said amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 3,86,644.2/- and Rs 25,808/- paid on account of VAT from total paid amount of Rs 28,43,713.34/-. The amount of such taxes are 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.

- (vii) It is pertinent to mention that if any lawful dues remain payable by the complainant to the respondent, same shall remain payable and can be demanded by the respondent at the time of offer of possession.
7. **Disposed of** in above terms. File be consigned to record room.



.....
RAJAN GUPTA
[CHAIRMAN]



.....
DILBAG SINGH SIHAG
[MEMBER]

