



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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## COMPLAINT NO. 353 of 2021

Rupesh Arora & Sarita Arora

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: 5<sup>th</sup>**

**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)**

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 the respondents.

2. Brief facts as averred by the complainants are that they had purchased allotment rights of unit no. PE-315-GF having area 1485 sq ft situated in respondent's project namely 'Park Elite Floors, Faridabad from original allottee namely Mr. Surya Sharma vide sale letter dated 28.06.2013. Said unit was booked by the original allottee on 26.05.2009 by making a payment of Rs 1,50,000/-. Builder buyer agreement was executed between the complainants and respondent on 01.10.2013 and in terms of clause 5.1 of it, possession was supposed to be delivered upto 01.04.2016 (24+6 months). It has been alleged by the complainant that possession has not been offered by the respondent till date even after receiving Rs 35,46,561.26/- against basic sale price of Rs 27,25,895/-. Feeling aggrieved, present complaint has been filed by the complainants seeking possession of unit alongwith delay interest.

3. In support of the averment of payment of Rs 35,46,561.26/-, a statement of account dated 17.02.2020 and receipts for Rs 35,46,561.26/- issued by the respondents to the complainant have been attached in complaint file as Annexure C-5.

4. Respondents in their reply have admitted allotment of booked unit in favour of the complainants. They have also admitted execution of Floor Buyer Agreement while submitting following submissions:-

- (i) That possession of booked apartment has been delayed on account of force majeure conditions which mainly relates to delayed in 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 with clauses of the said agreement.

(iii) Regarding relief pertaining to delay interest, it has been submitted that complainants are subsequent allottees of booked unit so they are not entitled to delay interest as they were well aware of the status of project at time of purchase of unit from original allottees. In support, he cited para 38 of judgement dated 24.08.2020 of Hon'ble Supreme Court in Civil Appeal number 6239 of 2019 titled 'Wing Commander Arifur Rahman Khan and Aleya Sultana and others versus DLF Southern Homes Private limited' and para 6 of judgement dated 23.10.2008 of Hon'ble Supreme Court in Civil Appeal no. 3409 of 2003 titled as HUDA vs Diwan Singh.

(iv) Regarding possession it has been stated that construction of the unit is 70% 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 2 above. Sh. Hemant Saini, Id. counsel for the respondents argued that respondents are ready to allot alternate unit in completed project if complainants are ready to shift. However, complainants insisted upon relief prayed in complaint only.

6. Authority has gone through written submissions made by both the parties as well as have carefully examined their documents and oral arguments while passing following orders :-

- (i) Basic facts of the matter are undisputed that the unit was booked by the original allottees on 26.05.2009 and Builder-Buyer Agreement was also duly executed between the complainant and respondent on 01.10.2013. But possession has not been offered by respondent till date and as per version of respondent, construction is going on in full swing and possession will be handed over shortly to complainants.
- (ii) Regarding question of law posed by the respondent that delay interest is not admissible in respect of a subsequent allottee, the Authority is unable to agree with the contention of the learned counsel for the respondent. In this case, original allottee was allotted an apartment in question on 26.05.2009 and thereafter complainants stepped into the shoes of the original allottee on 08.07.2013. Builder buyer agreement in respect of booked unit got executed between the complainant and respondent on 01.10.2013. It is the case where the BBA was executed with complainants only and as such the complainants are not claiming their right through the previous allottee. Moreover, in terms of definition of 'allottee' provided under Section 2(d) of RERA Act, 2016 the person who has subsequently acquired allotment of unit through sale, transfer or otherwise i.e subsequent allottee is duly covered in it.



So, for all practical purposes, the present complainants are like an original allottee. Section 2 (d) of RERA Act, 2016 is reproduced below for reference:-

**Allottee-** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be has been allotted or sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom the plot or apartment is given on rent.

It is pertinent to mention here that Hon'ble Supreme Court in Civil Appeal no. 7042 of 2019 titled as M/s Laurate Buildwell Pvt Ltd vs Charanjeet Singh has held that that per se bar to the relief of interest on refund, enunciated by the decision in 'Huda vs Raje Ram' which was applied in 'Wg. Commander Arifur Rahman' cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. In this case complainants had stepped into shoes of original allottees on 28.06.2013 prior to execution of builder agreement dated 01.10.2013 which was executed with complainant only. Said transfer was duly endorsed by respondent on 08.07.2013. In terms of said builder buyer agreement deemed date of possession comes to 01.04.2016. Respondent was duty bound to deliver possession within stipulated time but he has failed in

his duty. There is no reasonable justification/explanation has been provided by the respondent for delay of 6 years. Even today, no specific timeline has been committed by the respondent. Status mentioned in the reply is that construction is going on in full swing and possession will be handed over shortly which implies that project is not complete. This act is a serious default on part of respondent. In view of aforesaid reasons, the argument of respondent is not accepted.

- (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 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 of 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 of merit.

- (iv) For the forgoing reasons, it is decided by the Authority that the complainants who are waiting for last 6 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 for the delay caused therein from the deemed date of possession till handing over of possession 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 01.04.2016 (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.

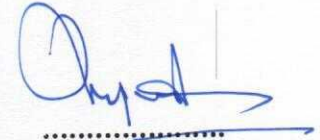
- (v) A delay of more than 6 years has already been caused. This fact of inordinate delay having been caused entitles the complainants to upfront payment of delayed interest amounting to Rs. 17,04,754/- within a period of 90 days from uploading this order. This delay interest has been calculated from the Accounts Department of the Authority for the period from the due date of possession till the date of passing this order. The complainants will further be entitled to monthly interest of Rs. 24,168/- from the date of passing this order till the date a valid and lawful offer of possession is made.
- (vi) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 31,61,742.86/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 3,62,445.40/- and Rs 22,373/- paid on account of VAT from total paid amount of Rs 35,46,561.26/-. 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.

- (vii) It is added that if any lawful dues remain payable by the complainant to the respondent, the 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]

