



Complaint no. 1003 of 2020

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO 1003 of 2020

Vipin Kumar Sharma And Yogita Sharma

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 08.03.2022

Hearing: 8th

Present: Mr. Ramesh Malik, Counsel for the complainant through VC
Mr. Hemant Saini & Mr. Himanshu Monga, Counsel for the
respondent

ORDER (RAJAN GUPTA-CHAIRMAN)

Today is 8th hearing of this case. This case was heard at length on 27.07.2021 and 01.09.2021 wherein it was observed by the Authority that actual possession of unit has not been handed over to complainant till date even after execution of conveyance deed on 05.07.2019. Relevant part of orders dated 27.07.2021 and 01.09.2021 is reproduced below respectively.

“Main dispute in this case is that conveyance deed has already executed on 05.07.2019 but actual possession of the unit bearing no. H-40, SF having area 1022 sq ft

situated in respondent's project Park Elite Floors, Faridabad has not yet been handed over to the complainant. Today is the fourth hearing of this case. On 05.01.2021 this case was heard at length and certain observations were made by Authority, Relevant part of which is reproduced below for reference:-

“3. Learned counsel for complainant states that his client is not having possession of unit in question despite execution of conveyance deed. He referred to an email dated 10.11.2020 in support of his argument whereby respondent is still asking him to take possession of unit. However, said email has not been attached with the complaint petition so he seeks some time to place it on record.

4. It has been observed by the Authority that the respondent has offered possession of unit in question on 29.05.2018 and received occupation certificate on 07.09.2018. Meanwhile, conveyance deed was executed on 19.07.2018. Complainant has filed present complaint on 18.09.2020 i.e. after lapse of two years of execution of conveyance deed with a prayer to deliver him actual possession of unit. Fact regarding actual handing over of possession needs to be verified. The onus is on complainant to prove that he is not enjoying/having possession of unit as of today. He is directed to place relevant documents in support of his plea with an advance copy being supplied to respondent.

5. Regarding plea of dismissal raised by respondent the Authority is of view that the said plea is not acceptable in this case as complainant is specifically denying the most relevant fact of handing over of possession of unit, whereas in the referred complaint no. 3189/2019 the complainant was aggrieved only for the delayed possession charges and had not contested handing over of possession by the developer.”

2. In compliance of order dated 05.01.2021 complainant has already filed a copy of an email dated 10.11.2020 upon which he is relying upon to prove that respondent is still asking him to take possession of the

unit. Ld. counsel for respondent states that he has not received a copy of it. Copy of same was supplied to him in the Court itself.

3. On perusal of email dated 10.11.2020 it is found that keys of the unit are still in the custody of respondent-company and actual delivery of possession of unit is yet to be given to complainant. In these circumstances, the Authority prima facie is of view that possession of the booked unit has not been yet handed over to the complainant and obligations on the part of the respondent are not fully discharged.

4. Further, ld. counsel for respondent has referred to order dated 02.03.2021 wherein he sought time to amicably settle the dispute with the complainant. He requested for some more time due to the fact that during the month of March-April he was down with COVID and was not in a position to conduct a meeting with complainant-allotee. Complainant's counsel also agrees for exploring possibility of mutual settlement. On request of both parties, the case is adjourned to 01.09.2021 for settlement, failing which the case will be heard on merits on next date."

Order dated 01.09.2021

"While perusing case file, it is revealed that main dispute in this case is that conveyance deed has already executed on 05.07.2019 but actual possession of the unit bearing no. H-40, SF situated in respondent's project Park Elite Floors, Faridabad has not yet been handed over to the complainant. On the last date of hearing, it was observed that keys of unit are still with the respondent and complainant has not got actual possession of the unit. However, on request of respondent the case was adjourned for mutual settlement. Relevant part of the order is reproduced below for reference: -

3. On perusal of email dated 10.11.2020 it is found that keys of the unit are still in the custody of respondent-



company and actual delivery of possession of unit is yet to be given to complainant. In these circumstances, the Authority prima facie is of view that possession of the booked unit has not been yet handed over to the complainant and obligations on the part of the respondent are not fully discharged.

4. Further, ld. counsel for respondent has referred to order dated 02.03.2021 wherein he sought time to amicably settle the dispute with the complainant. He requested for some more time due to the fact that during the month of March-April he was down with COVID and was not in a position to conduct a meeting with complainant-allottee. Complainant's counsel also agrees for exploring possibility of mutual settlement. On request of both parties, the case is adjourned to **01.09.2021** for settlement, failing which the case will be heard on merits on next date.

2. Today, ld. counsel for complainant has apprised the Authority that respondent had sent an email dated 25.08.2021 requesting complainant to take possession of the unit by collecting keys of it from their authorised project-in-charge. Copy of said email has been placed on record.

3. On perusal of email it is found that respondent is willing to handover possession of the unit in question. In these circumstances, complainant should go and take possession of unit. Meanwhile the issues pertaining to delay interest and refund of club charges will be taken up for adjudication on next date of hearing. Complainant is directed to file his calculations for claim of delay interest calculated in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR+2%. Said calculations shall be filed atleast seven days prior to the next date of hearing with an advance copy being supplied to respondent.

4. With these directions, the case is adjourned to **16.09.2021.**"



2. On the last date of hearing, the case was adjourned granting time to both parties for out of Court settlement. But settlement could not get effected between the parties. Therefore, this case is heard on merits for final disposal.

3. Complainant herein is seeking possession of unit no. H-40, SF having 1022 sq ft area situated in respondent's project 'Park Elite Floors, Faridabad. Builder Buyer agreement was executed on 15.09.2010 and in terms of it possession was supposed to be delivered upto 15.03.2013. Complainant has already paid an amount of Rs 33,89,222/- against basic sale price of Rs 20,55,999/-. In support of it, statement of accounts issued by respondent dated 19.06.2018 has been annexed as Annexure C-5. It has been specifically alleged by the complainant that respondent got conveyance deed executed on 05.07.2019 but has not handed over actual possession of unit to him till date. Therefore, he is seeking possession of the unit in question alongwith delay compensation till the date of actual handing over of possession instead of meagre amount of Rs 1,30,690/- provided by respondent on account of deferred performance and refund of club charges amounting to Rs 54,663/- as there is no mention of any club charges in the builder buyer agreement.

4. Reply has already been filed wherein respondent has prayed for dismissal of complaint on the ground that no contractual obligations subsists between the parties after execution of conveyance deed on 19.07.2018.



Further it has been submitted that unit in question was booked by original allottee Sh. M D Goyal in year 2009 and builder buyer agreement dated 15.09.2010 was executed with him . Thereafter second allottee Sh. Azad Singh purchased allotment rights of unit from original allottee in year 2011. Then Sh. Aman Pruthi third allottee had purchased allotment rights of unit from second allottee in year 2012. Complainant being fourth allottee purchased allotment rights of unit from third allottee in year 2013. Possession of unit was offered on 29.05.2018 to complainant and on special consideration he was provided a credit amounting to Rs 1,30,690/- as 'compensation' towards allotted unit. Further it has been stated that complainant after being fully satisfied had got conveyance deed executed and by virtue of clause J and 3 of conveyance deed has specifically undertaken not to raise any issue/dispute towards possession of allotted unit. Present complaint is an afterthought of complainant as it was filed after expiry of 2 years of taking possession and executing conveyance deed. Regarding issue of club charges, it has been submitted that same had been duly agreed in clause 1.5(e) of BBA and complainant is duty bound to pay the same.

5. Learned counsel for complainant submitted that complainant in compliance of order dated 01.09.2021 of this Authority had taken possession of unit on 29.09.2021. Further he argued that his client has got actual possession of unit after lapse of 2 years after execution of conveyance deed.



Respondent intentionally did not handover possession of unit without interference of this Court. So, respondent be directed to pay delay interest for the delay caused in terms of principles already decided in complaint no. 113/2018 and for making refund of Rs 54,663/- taken towards club membership charges because there is no provision of club charges in the agreement.

6. Rebutting the arguments of ld. counsel for complainant, ld. counsel for respondent reiterated the averment as submitted in his written statement and further argued that complainant is relying upon email dated 10.11.2020 wherein it has been written that "We would like to inform you that your unit is now ready for handover. You are requested to visit out site to collect keys of your BPTP home and complete the required documentation" therefore at that point of time i.e in year 2020 keys of unit were ready to be handed over and complainant was requested to take keys of unit. Complainant however did not take possession at that time. It is the respondent company which in good faith had written said email to him for collecting keys of the unit but complainant did not come forward to take possession of unit and has rather filed present complaint. As such complaint is not maintainable.

7. At this stage, specific query was put up to ld. counsel for complainant as to what had prohibited the complainant from taking possession in year 2020



when respondent had sent him an email dated 10.11.2020 to collect keys of the unit. In reply ld. counsel stated that unit was not ready at the time when keys of units were offered in year 2020. Ld. counsel for respondent argued that no document has been placed on record by complainant in support of his submission. Moreover, if unit was not complete then why did he executed conveyance deed in year 2019 i.e. one year prior to 2020.

8. Lastly ld. counsel for complainant argued that when actual possession was not handed over to his client then no meaning/relevance can be placed upon execution of conveyance deed. He prayed for allowing this complaint in favour of complainant. Ld. counsel for respondent argued that it is complainant who it as fault, he did not take possession intentionally therefore this complaint should be dismissed.

9. After hearing submissions of both parties and perusing relevant record, Authority observes and orders as follows:-

- i. Respondent in his reply has admitted execution of builder buyer agreement on 15.09.2010 as well as conveyance deed on 05.07.2019 with complainant. Several opportunities were taken by respondent for amicable settlement of the matter but parties could not arrive at any settlement. Complainant after execution of conveyance deed on 05.07.2019 had filed present complaint



on 18.09.2020 after lapse of 1.2 years for seeking relief of delivery of actual possession of unit and refund of club charges.

The complainant however took possession of the unit on 29.09.2021 in compliance of order dated 01.09.2021 passed by this Authority.

- ii. Respondent in his reply has referred to judgment dated 12.03.2020 passed by HRERA, Gurugram in complaint no. 3189/2019 whereby complaint was dismissed for the reason that after execution of conveyance deed no contention is left inter-se both the parties except the provisions of section 14(3) and 18(2) of the RERA Act, 2016, as such, parties cannot come in dispute at a belated stage for relief of delayed possession charges. Authority is of the view that this argument is not acceptable in this case as complainant has specifically denied the most important fact of actual handing over of possession of unit, whereas in the referred complaint no. 3189/2019 the complainant was aggrieved only for the delayed possession charges after execution of conveyance deed and had not contested handing over of possession by the developer. Another difference remains that the case referred to pertains to concluded contract whereby both parties had discharged their respective obligations towards



each other. But in instant case important obligations are yet to be discharged i.e. possession was yet to handed over. Therefore, factual position of referred case is different from the present case in hand. In this case only conveyance deed was executed between the parties but possession was not handed over to complainant till 29.09.2021 (date of actual taking of possession). It is clear from the facts that main purpose of contract/BBA had not been achieved/fulfilled even after 1.2 years of execution of conveyance deed. It can be inferred that signing of conveyance deed was only a documentary formality which only acts as a proof of ownership of property/unit in favour of complainant, but no meaning can be assigned to it, in respect of fulfilling vital obligation of respondent towards complainant for handing over of possession. In this case, main obligation cast upon respondent to handover actual possession was yet to be complied with therefore it is not a case of concluded contract. Therefore, execution of conveyance deed cannot be treated as a hindrance in determining rights for delay interest of the complainant. For these reasons, argument of respondent for dismissal of this complaint is rejected.

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iii. Factual position reveals that respondent was supposed to deliver possession by 15.03.2013 in terms of BBA dated 15.09.2010. But possession was offered to complainant on 29.05.2018, however, occupation certificate was received by respondent on 07.09.2018. Complainant thereafter paid remaining balance amount to the respondent towards acceptance of offer of possession on 15.06.2018 and respondent had also provided him Rs 1,30,690/- as compensation towards delay of allotted unit, which is evident from statement of accounts dated 19.06.2018 annexed as Annexure C-2. Thereafter conveyance deed was executed between the parties on 05.07.2019. Complainant's act of paying the demands raised alongwith offer of possession and execution of conveyance deed clearly shows that complainant had duly accepted the offer of possession made by respondent. But problem arose when actual physical possession was not handed over to him. For this he had sent various emails dated 15.06.2018, 25.12.2018, 18.06.2019, 21.02.2019 and 27.08.2020 to the respondent to enquire about the status of handing over of possession. Respondent did not hand over possession of unit, therefore present complaint was filed on 08.09.2020 for seeking actual possession of the unit. Thereafter complainant received an

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email dated 10.11.2020 sent by respondent i.e after 2 months of filing of complaint stating that keys of the units are ready and complainant may take possession. Copy of email dated 10.11.2020 was placed on record by the complainant by way of application dated 01.03.2021. Said email was referred to by complainant to prove that he had not received actual physical possession even after payment of full amount as well as execution of conveyance deed. Thereafter, complainant in terms of order dated 01.09.2021 took actual possession of unit on 29.09.2021. It is pertinent to note that complainant did not mention any deficiency in the booked unit during the previous hearings of this case nor even stated anything in his application dated 01.03.2021 vide which email dated 10.11.2020 was placed on record. A question that arises herein is that as to what had prohibited the complainant to take possession of the unit after receipt of email dated 10.11.2020 from respondent. At the time of hearing complainant's counsel stated that booked unit was not complete in the year 2020 when the email was received but he has not placed any document in support of his submission. Denial on the part of complainant regarding completeness of booked unit in any respect without any documentary proof is not



acceptable and said plea is also not acceptable for the reason that occupation certificate for the unit was received by respondent way back in year 2018. Complainant has failed to prove that after email dated 10.11.2020 it was due to fault of respondent that they could not get actual possession of unit. Further it has been revealed that amount of Rs 1,30,690/- was credited by the respondent to complainant on account of deferred performance vide statement of account dated 19.06.2018. In the documents/emails placed on record, complainant has not disputed the quantum of said amount, however in the complaint said amount has been disputed stating that such a meagre amount for delayed possession is not acceptable whereas fact remains that he has never raised any objection against it since June,2018 upto filing of present complaint. Respondent in his reply has stated that complainant vide clause J and 3 of conveyance deed had duly acknowledged to have taken possession of allotted unit after detailed inspection and had also undertaken not to raise any claim with respect to any aspect of the unit. Copy of conveyance deed has been placed on record as Annexure R-14. Argument of respondent that complainant had already got possession is not supported with any documentary proof and terms and clauses of

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conveyance deed as general practice are executed upon standard format. Said clauses cannot be relied upon to accept the plea of respondent without any documentary proof in support of it.

- iv. Therefore, it can be concluded that complainant has got actual possession of allotted unit after 1.2 years of execution of conveyance deed but whole of the delay is not caused by the respondent. Respondent caused delay only upto 10.11.2020 for which respondent was at fault for not handing over of possession, thereafter complainant could have taken possession and in case there was some deficiencies in the unit same must have conveyed and alleged during pendency of complaint with documentary evidence and in absence of it, the complainant cannot be allowed to claim delay interest upto actual handing over of possession.
- v. In furtherance of aforesaid observations, it is decided that complainant deserves to be granted delay interest for the period ranging from deemed date of possession (15.03.2013) to the time when respondent had offered him keys of unit vide email dated 10.11.2020 in terms of Rule 15 of HRERA Rules, 2017 (SBI MCLR+2% i.e 9.3%) and amount of Rs 1,30,690/- already provided by respondent towards compensation for delayed delivery of unit will be deducted from the liability of interest.

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Accordingly, delay interest has been got calculated from the Accounts Branch of this Authority which works out to Rs 18,08,221/-and after deduction of Rs 1,30,690/-, payable delay interest works out to 16,77,531/-. Said amount shall be paid by respondent to complainant within 90 days of uploading of this order.

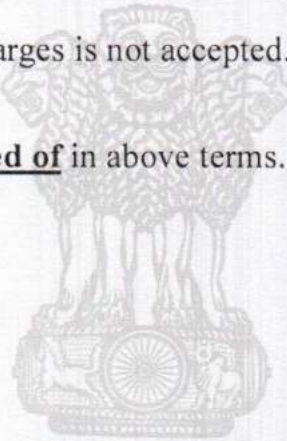
- vi. The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 28,99,445.3/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 1,63,462.11/-, Rs 26,211/- on account of VAT ,Rs 97,829.42/- paid on account of EEDC, Rs 1,92,000/- paid on account of stamp duty and Rs 10,275.35 paid on account of service tax from total paid amount of Rs 33,89,223.18/- 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

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collected by a builder cannot be considered a factor for determining the interest payable to the allottee towards delay in delivery of possession.

- vii. Club membership charges has been disputed by complainant on the ground that there is no mention of these charges in BBA. But respondent has rightly argued that these charges find mention in clause 1.5 (e) of BBA and Authority on perusal of BBA finds that these charges has already been agreed between the parties in terms of BBA. So, complainant's plea for refund of club membership charges is not accepted.

11. Complaint is **disposed of** in above terms. File be consigned to record room.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH MEMBER
[MEMBER]