



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 80 of 2021

Pankaj Kumar Arora & Sandhya Arora

....COMPLAINANT(S)

VERSUS

M/s BPTP Pvt Ltd

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

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)

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.

2. Brief facts as averred by the complainants are that they had purchased allotment rights of unit no. PE-160-GF having area 1510 sq ft situated in

respondent's project namely 'Park Elite Floors, Faridabad from original allottees namely Mr. Gaurav Saxena and Ms. Anjali Saxena vide sale letter dated 11.07.2013. Said unit was booked by the original allottees on 08.06.2009 by making payment of Rs 2,00,000/-. Builder buyer agreement was executed between the original allottees and respondent on 10.07.2013 and in terms of clause 5.1 of it, possession was supposed to be delivered upto 10.01.2016 (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 33,65,517.55/- against basic sale price of Rs 31,45,453/-. Feeling aggrieved, present complaint has been filed by the complainants seeking possession of unit alongwith delay interest.

3. In support of the averment that said amount of Rs 33,65,517.55/- has been paid the complainants, a statement of account dated 05.11.2018 and receipts for Rs 33,65,517.55/- 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 the delayed approval of their plans by the departments concerned of the State Government.

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- (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) In this particular case respondent are alleging that complainants had defaulted in making payment of the demand called on 27.09.2017.
- (iv) Regarding relief pertaining to delay interest it has been submitted that complainants are subsequent allottees of booked 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.
- (v) Regarding possession it has been stated that respondents are making every endeavour to handover possession to the complainants. It has also been mentioned that complainants were duly offered alternate unit in project parkland pride vide email dated 23.11.2020.

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 1 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.

It observes and orders as follows:-

- (i) Basic facts of the matter are undisputed that the unit was booked by the original allottees on 08.06.2009 and Builder-Buyer Agreement was duly executed between the original allottees and respondent on 10.07.2013. But possession has not been offered by respondent till date and as per version of respondent they are making every endeavour to handover possession to complainants.
- (ii) Regarding question of law posed by the respondent that the 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 allottees were allotted an apartment in question on 24.12.2009 and builder buyer agreement in respect of it got executed between the parties on 10.07.2013, thereafter the complainants stepped into the shoes of the original allottees on 11.07.2013 i.e just one day after execution of BBA. 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 complainants had stepped into shoes of original allottees on 11.07.2013 after execution of builder agreement dated 10.07.2013. Said transfer was duly endorsed by respondent on 13.07.2013. In terms of said builder buyer agreement deemed date of possession comes to 10.01.2016. The 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

respondent is making every endeavour to handover possession of unit which implies that project is not complete. This act is a serious default on part of respondent and in these circumstances the argument of respondent cannot be 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 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.

- (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 10.01.2016 (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.

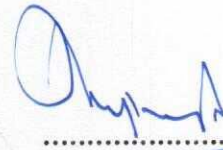
- (v) A delay of more than 9 years has already been caused. This fact of inordinate delay having been caused entitles the complainants to upfront payment of delayed interest amounting to Rs. 16,65,253/- within a period of 90 days from uploading this order. This delay interest has been calculated from 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. 22,713/- 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 29,71,457.15/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 3,68,561.40/- and Rs 25,499/- paid on account of VAT from total paid amount of Rs 33,65,517.55/-. 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.



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SHAG
[MEMBER]