



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## COMPLAINT NO. 1152 OF 2019

Sandeep Madan

....COMPLAINANTS(S)

VERSUS

BPTP Limited and others

....RESPONDENT(S)

**CORAM: Rajan Gupta  
Dilbag Singh Sihag**

**Chairman  
Member**

**Date of Hearing: 03.03.2022**

**Hearing: 17<sup>th</sup>**

**Present:** Shri Sandeep Madan, Complainant in person through video-conferencing.

Shri Hemant Saini, Learned counsel for the respondent through video-conferencing.

### **ORDER: (RAJAN GUPTA-CHAIRMAN)**

1. Authority had passed a detailed order in the 15<sup>th</sup> hearing of this case dated 09.11.2021 wherein tentative view with respect to offer of possession was expressed and respondent was directed to justify their

demands raised in the year 2018 and 2012 by way of written submissions.

Operative para is being reproduced below:

Even, if argument of respondents is accepted that they had given an offer to complainant after obtaining part completion certificate for the colony; the said offer letter dated; 06.04.2012 cannot be considered a valid offer because the complainant could not have serviced such huge additional demands made by respondents.

Authority would further hear this matter when respondents will have to justify the demands made by them. Prima facie; the Authority is of the view that the respondents raised an excessive demand and the complainant was justified in declining the same. Respondents may come up with evidence in support of their arguments and demands raised. They are also directed to make written submissions in this regard and supply its copy to the complainant.

2. Ld. counsel for the respondent stated that he has moved an application dated 11.01.2022 for dismissal of this complaint. He quoted a judgement passed in Newtech Promoters & Developers Vs State of Uttar Pradesh in Civil Appeal no. 6745/679 of 2021. It is stated in the said application that completion certificate was issued on 09.09.2010 and post receiving the said occupation certificate the respondent sent offer of possession dated 29.11.2011 to the complainant. Further, he argued that as per para 54 of judgement, application of RERA Act is retroactive in nature and the projects which are completed or where completion

certificate has already been granted does not fall under its purview. Therefore, the present complaint is exempted from the adjudicatory process of this Authority. Para-54 of the judgement of Hon'ble Supreme Court as reproduced below:-

“54. From the scheme of the Act, 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the on-going projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016.” (emphasis supplied).

3. To answer the questions posed by the learned counsel for the respondents, reference is drawn to Section-79 and Section-89 of the RERA Act as reproduced below:

**“Section 79: Bar of jurisdiction** - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

**“Section 89: Act to have overriding effect** - The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

4. Conjoint reading of Paras referred to above and Sections 79 and 89 of the RERA Act leads to unmistakable conclusion that the provision of this Act will have over riding effect notwithstanding anything inconsistent therewith contained in any other law. Further after coming into force of RERA Act, exclusive jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority is empowered under this Act to determine shall be that of the RERA only and not of any other court.

5. It is relevant here to briefly discuss the concept of completion/occupation certificate. What is a completed project or a project fit to be granted occupation certificate has not been defined anywhere in the RERA Act, 2016. These concepts have been somewhat defined in relevant laws of different states of the country. The completion certificates and occupation certificates are granted by the State Government authorities as per their own laws and policies. Grant of completion/occupation certificate by State Government authorities only signifies that relevant project has fulfilled certain requirements stipulated by certain laws enacted by State Government. It does not signify that the promoter has fulfilled its obligations towards allottees in terms of builder buyer agreements.

6. The agreements executed by promoters of real estate projects with home buyers-allottees stipulates many more obligations than provided for in the relevant laws regulating the subjects of grant of completion/occupation certificates. It is reiterated that grant of completion and occupation certificate only mean that certain parameters of laying infrastructure facilities under set laws of the State Government have been complied with by the promoters. They do not in any manner certify that the promoters have fulfilled their obligation towards allottees. The obligation towards the allottees as enlisted in the builder-buyer agreements relate to numerous additional subjects like the consideration to be exchanged; specifications of the apartments; timeline within which the project would be completed; obligation to execute conveyance deeds; obligation to hand over the completed project to the association of allottees; laying of infrastructure facilities and handing them over to the association of allottees in the manner prescribed etc.etc. The promoters of completed as well as unregistered projects could be defaulting in respect of such obligations. If a promoter illegally and unjustifiably demands additional amount over and above the agreed sales consideration, dispute will have to be settled by some court of law. After coming into force of

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this Act and in view of the provisions of Section 79 and 89, RERA and Consumer Court only will have jurisdiction to deal with such disputes.

7. Authority is of the considered view that respondents are completely misreading provisions of the Act and Para-54 of the judgement of the Hon'ble Supreme Court passed in Newtech Promoters' matter. The question as to which forum will redress the grievances of the kinds listed above of allottees pertaining to ongoing or completed or registered or unregistered projects was not before the Hon'ble Supreme Court in Newtech Matter. In considered view of this Authority operative part in para-54 of the judgement of the Hon'ble Supreme Court is that "....therefore, vested or accrued rights, if any, in no manner are affected". Such vested or accrued rights could pertain to new projects, ongoing projects, completed projects, registered projects or unregistered projects. In considered view of this Authority, genuine grievances of the allottees in any kind of project have to be redressed. Therefore, there has to be a forum for this purpose. Such forum is RERA in terms of provisions of the Act, especially Section 79 and Section 89 of the Act. In this regard relevant portion of the judgment dated 09.08.2019 of Hon'ble Supreme Court passed in Writ Petition (Civil) no. 43 of 2019 titled as Pioneer



Urban land & Infrastructure Ltd. & Anr. versus Union of India & Ors is reproduced below:

“86(ii). The RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA. Remedies that are given to allottees of flats/apartments are therefore concurrent remedies, such allottees of flats/apartments being in a position to avail of remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code.”

8. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.

9. The complainant's case is that complainant applied for a plot admeasuring 500 sq. ft. in the respondent's project Parklands vide application dated 07.02.2006 after making a payment of Rs. 10,18,750/- as booking amount. On 28.09.2006 respondent gave priority number 63 to the complainant for the said plot. Total consideration of the plot was Rs. 40,75,000/- against which complainant had paid Rs. 34,76,383/- up to 30.05.2008 however he has submitted receipts of payments of only Rs. 33,13,383/-. After numerous requests by complainant, builder buyer agreement was not executed between the parties. Complainant alleges that possession of the plot was to be offered within 18 months.

Complainant states that respondent vide letter dated 04.07.2018 demanded an amount of Rs. 38,34,313/- without explaining any reason or justification. In the said demand letter, the plot no. of complainant is mentioned as U-18. Complainant alleges that this demand of Rs. 38,34,313/- is not justified and only an amount of Rs. 5,98,617/- is pending against him.

Complainant is seeking possession of his plot along with delay interest at the rate of 18 %. He further prays that action be taken against the respondent for not executing builder buyer agreement.

10. The respondent in his reply has denied the allegations made by complainant and made following submissions:

(i) The respondent has raised preliminary objection that the unit in question is a plot admeasuring 500 sq. yds and as per Section 3(2)(a) of the RERA Act, registration is not required for an area proposed to be developed that does not exceed 500 square meters.

(ii) Further respondent has contended that the complainants cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. According to respondent only provisions of agreement shall be binding upon the parties to such an agreement.





(iii) The respondent has denied that total consideration of the plot was Rs. 40,75,000/- or the complainant has made payment of Rs. 34,76,383/-. It is averred that the amount of Rs. 40,75,000/- is BSP only. Further, as per statement of accounts dated 06.04.2012 complainant has paid only an amount of Rs. 33,13,383/- and not Rs. 34,76,383/-.

(iv) Complainant was allotted plot no. U-18 vide allotment letter dated 04.06.2007. Regarding non-execution of plot buyer agreement, it is replied that respondent had sent draft agreement to complainant for execution but it is the complainant who failed to send back the agreement after signing the same.

(v) It is stated that there is no delay in offering the possession of the unit. It is the complainant who has made repeated defaults in making payments due to which proposed timelines could not be adhered. Possession of the plot was offered on 06.04.2012 and after that last and final opportunity letter was issued to the complainant on 30.05.2012. Plot stood terminated on account of non-payment vide letter dated 25.07.2013. Respondent had also offered complainant to visit their office for reinstatement of the unit but complainant never tried to sort out the dispute. Basic infrastructure pertaining to sewer, storm, water supply stands laid and street light poles are erected.



(vi) During hearing dated 28.01.2021 respondent produced certain documents showing that part completion certificate was received by the respondent on 09.09.2010. Respondent has also filed an affidavit stating that part completion certificate was received on 09.09.2010 in respect of plot no. U-18 and possession of the plot was offered after obtaining part completion certificate.

11. Authority has gone through rival contentions. It has also gone through all documentary evidence placed on file in respect of the agreement. The Authority observes and orders as follows:

(i) Regarding the argument of the respondent that this Authority does not have the jurisdiction to deal with the complaint relating to plots measuring 500 Sq. yds., it is observed that the respondent is developing a larger colony over the several acres of land. The registrability and jurisdiction of this Authority has to be determined in reference to the overall larger colony being promoted by the developers. The argument of the respondent is that since the plot does not exceed 500 Sq. yds. Therefore, the Authority has no jurisdiction is totally untenable and unacceptable. Promoter is a developer of a large project and this plot is one part of the large number of plots. Jurisdiction of the Authority extends to entire project and each plot of the said project.

(ii) Next issue which needs adjudication is regarding non-execution of plot buyer agreement. Admittedly plot buyer agreement has not been executed between parties. An allotment letter was issued by the respondent on 04.06.2007. They accepted payment of Rs. 33,13,383/- from the complainant. After accepting such large amount, the onus was on the respondent to execute plot buyer agreement. Respondent has not annexed any proof in respect to sending of draft agreement to the complainant. In the absence of any such evidence of sending draft agreement, the plea of respondent that they had sent the draft agreement cannot be accepted. Onus of executing the builder buyer agreement was on the respondent and they have failed to execute the same.

(iii) As per the receipts annexed it is conceded that complainant had made payment of Rs. 33,13,383 till 30.05.2008. Respondent has also admitted that an amount of Rs. 33,13,383 was received as is evident from the statement of accounts dated 06.04.2012 sent to the complainant. Authority accepts the receipts annexed by the complainant. Authority observes that it is fair and just that deemed date of possession should be reckoned as three years from the date by which substantial payments had been made by the complainant. Therefore, deemed date of possession in this case works out to be 30.05.2011 i.e., 3 years after 30.05.2008.



Accordingly, delay interest payable to the complainant shall be calculated from this date till the valid offer of possession is given to the complainant.

(iv) The next issue for adjudication is whether offer of possession dated 06.04.2012 was lawful which the complainant ought to have accepted.

(v) The Authority has gone through the statement of accounts accompanying said letter of offer dated 06.04.2012. Basic sale price of the plot has been shown as about Rs. 28.73 lacs against which amount received has been shown as about Rs. 33.13 lacs. After including various charges, the respondents have further demanded an amount of Rs.22.38 lacs from the complainant. Even after having paid Rs. 33.13 lacs against basic sale price of Rs. 28.73 lacs, an additional amount of Rs. 22.38 lacs were demanded by the respondents inclusive of various charges like EDC-Rs.5.14 lacs; EEDC-Rs.6.90 lacs; PLC-Rs.4.09 lacs; IDC-Rs.2.23lacs and Electrification and STP charges of Rs. 4.99 lacs etc. Prima facie, these charges appear exorbitant. To the best of understanding of this Authority. EDC and IDC charges are 10 to 15% of the basic cost of the plot. Enhanced EDC is not applicable because its recovery has been stayed by Hon'ble High Court. No justification has been given for charging 4.99 lacs towards electrification and STP charges which is



meant to be part of basic sale price of the plot. Prima facie, therefore, the offer of possession could not have been accepted by the complainant because respondents had demanded a huge amount of additional money and without tendering detailed justification thereof.

Even, if argument of respondents is accepted that they had given an offer to complainant after obtaining part completion certificate for the colony; the said offer letter dated; 06.04.2012 cannot be considered a valid offer because the complainant could not have serviced such huge additional demands made by respondents. The Authority is of the view that the respondents raised an excessive demand and the complainant was justified in declining the same.

(vi) Further fact in the matter is that the respondents had terminated the allotment of the complainant vide letter dated 25.07.2013, but they had failed to return the money deposited with them. Nothing has been shown as to what transpired between the parties after; 2013. On 04.07.2018 However, the respondents again sent a final demand notice to the complainant demanding an amount of Rs. 38.34 lacs to be paid as balance outstanding amount. It is presumed that the earlier amount of Rs. 22.38 lacs demanded in the year 2012 increased to Rs. 38.34 lacs by adding interest for the intervening period.



12. Respondent has not submitted any justification with respect to demands made in the year 2012 and 2018. Therefore, it is decided that for the reasons recorded above in para 12(v) the offer of possession is invalid. Complainant is entitled to delay interest from the deemed date of possession that is 30.05.2011 till the date of order 03.03.2022.

13. Complainants have only attached receipts of payment of Rs. 33,13,383/- out of the total paid amount of Rs. 34,76,383/- as alleged by the complainant. Interest is being calculated on an amount of Rs. 33,13,383/- from the deemed date of possession that is 30.05.2011 till the date of order that is 03.03.2022.

14. A delay of more than 11 years has already been caused. This fact of inordinate delay having been caused entitles the complainant to upfront payment of delayed interest amounting to Rs. 25,80,059/- within a period of 90 days from uploading this order. This delay interest has been calculated for the period from the due date of possession till the date of passing this order i.e 30.05.2011 to 03.03.2022 in terms of Rule 15 of HRERA Rules,2017 i.e @ 9.30%. The complainants will further be entitled to monthly interest of Rs. 21,003/- from the date of passing this order till the date a valid and lawful offer of possession is made.



The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 25,75,945/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC amounting to Rs. 5,14,048/- and Rs 2,23,390/- paid on account of IDC from total paid amount of 33,13,383/-. 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.

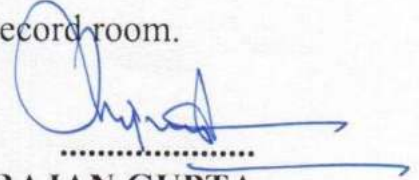
It is added that if any lawful dues remain payable by the complainants to the respondent, the same shall remain payable and can be demanded by the respondent at the time of offer of possession.

15. Respondent is directed to offer fresh possession to the complainant within 30 days of uploading this order along with statement

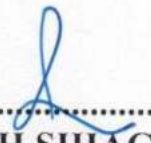


of accounts duly adjusting the amount of delay interest payable to the complainant.

**Disposed of** in above terms. File be consigned to record room.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]

