



Complaint no. 1137 of 2020

## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO 1137 of 2020

Veena Rani Jain

....COMPLAINANT(S)

VERSUS

BPTP Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta**

**Chairman**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing: 08.03.2022**

**Hearing: 8<sup>th</sup>**

**Present:** Mr. Rishi Jain, Authorised representative of complainant through VC

Mr. Hemant Saini, Counsel for the respondent

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

The captioned complaint has been filed by the complainant 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 respondents and for execution of fresh agreement to sale in accordance with the principles of RERA Act and rules.

2. Brief facts as averred by the complainant is that she had booked an apartment in an under construction project 'Park-81, sector -81, Faridabad, promoted by the respondents, on 19.09.2009 by paying Rs 3.5 lacs. An allotment letter dated 16.03.2010 was issued vide which unit No. CL-3-10-SF with 1478 sq. ft. area was allotted to the complainant. Thereafter, possession was offered by respondent on 19.02.2020 almost after 1.5 years from last payment made by complainant alongwith additional demand of Rs 8,49,895.44/-. Out of said demand complainant has impugned cost escalation charges and club membership charges and had also asked the respondent to adjust amount of delay compensation for the delay caused by him. Respondent in order to justify said charges had informed the complainant that these charges are payable in terms of builder buyer agreement, which was not prepared and executed between the parties till that time. So, complainant requested the respondent to prepare and give copy of agreement to her after execution. Against demand raised of Rs 8,49,895.44/- alongwith offer of possession, an amount of Rs 7,24,647/- was paid by complainant on 05.03.2020. Further an amount of Rs 78,168/- was also paid





towards administrative charges and annual maintenance charges for the period 19.06.2020 to 18.06.2021 on the assurance of respondent that possession will be given before 19.06.2020. Then due to spread of pandemic COVID-19 whole nation got struck and lockdown was imposed to curb it. At that time, complainant had requested the respondent to expedite the process of handing over of possession and in order to do so respondent had asked Rs 2,19,000/- towards stamp duty charges and execution of conveyance deed. Said amount was paid by the complainant. After making said payment, no -objection certificate for fit outs dated 11.06.2020 was handed over to complainant but it has been alleged that the construction of floor was not complete at that time. However, respondent had given assurance that possession will be delivered and conveyance deed will be duly executed within next 30 days. Thereafter, Builder buyer agreement was prepared and executed between the parties on 01.06.2020 which was supposed to be prepared after allotment of the concerned floor. But herein agreement was prepared after offering possession of unit and completing all documentary formalities. Said agreement was signed by complainant in good faith. Thereafter, various emails dated 15.09.2020 and 17.09.2020 were sent by complainant to respondent for providing information of current status of booked unit, but respondent instead of giving possession had sent a recovery notice dated 22.09.2020 for Rs 347/- towards arrears on interest on



delayed payments, Rs 970/- towards maintenance charges. Further by way of said recovery notice, complainant was informed that charges of Rs 2,19,000/- for conveyance deed will have to be paid directly by her at the registration office at time of execution of sale deed and in case said amount has already been paid to respondent then a refund cheque will be handed over to the complainant on day of execution of sale deed. It has been alleged by the complainant that above referred acts of respondent clearly shows that respondent is not interested in handing over of possession of booked unit even after receipt of Rs 41,55,046.39/- against basic sale price of Rs 31,36,254.72/-

3. Further it has been stated that area of the unit has been increased from 1487 sq ft to 1548 sq ft and for said increase an amount of Rs 1,52,500/- has already been paid by complainant on 01.11.2010. But issue herein is that respondent has calculated the increased area @ 2026 per sq ft, however, correct figure is Rs 2500 per sq ft, whereas original rate per sq ft of unit as per average rate of basic sale price comes to Rs 2006.56/-. So, it has been prayed that excess amount of Rs 30,099.84/- taken by respondent in lieu of increased area be refunded back to her.

4. It has also been prayed that club membership charges amounting to Rs 59,993/- be also refunded back because as such no club is in existence in the project and respondent be also directed to pay Rs 17,500/- towards





timely payment discount on payment of booking amount of Rs 3,50,000/- paid to respondent on 25.09.2009 on the ground that respondent had committed to refund 5% discount on timely payments as per clauses of booking form.

5. Further it has been stated that respondent has charged delayed interest @18% to the tune of Rs 26,163/-, for not honouring demand of Rs 3,51,339.99/- raised by respondent vide demand notices dated 19.07.2011 and 14.10.2011. Said demand was not honoured due to unavoidable circumstances as complainant was undergoing treatment for cancer. Accordingly, complainant had paid Rs 7,02,680/- inclusive of interest @18% on delayed instalment on 30.11.2011. But as per Section 2 (za) of RERA Act,2016 in case of default of both parties the rate of interest should be same and accordingly, excess amount of Rs 11,628/-, calculation in this regard is available at page no. 33 of complaint.

6. Respondent in his reply has admitted the allotment of unit in favour of complainant and stated that copy of BBA was sent to complainant for her signatures on 31.12.2010 but it is the complainant who has failed to return the signed copies of BBA. Postal receipt has been annexed as Annexure R-5 as proof of it. Further it has been stated that possession of the unit was offered on 19.02.2020 and it is only upon constant request of complainant that BBA was executed with complainant thereafter on 01.06.2020. It has



also been stated that complainant vide letter dated 05.03.2020 had entered into settlement with the respondent whereby discount of Rs 1,00,000/- was offered to complainant by respondent and it was agreed by complainant that all grievances, claims, allegations of complainant including delayed possession compensation in terms of BBA or provisions of applicable laws including Haryana Real Estate (Regulation and Development) Act, 2016 has been finally settled. Said letter has been annexed as Annexure R-16 at pg 120 of reply. Respondent being customer centric company and as a goodwill gesture also provided special credit compensation amounting to Rs 1,24,902.16/- towards allotted unit. Construction of the unit is complete and possession has already been offered but complainant instead of taking possession had filed frivolous complaint against respondent.

7. Regarding issue of timely payment discount of Rs 17,500/- it has been submitted that as per clause 23 of booking form question of timely payment discount would arise only after stage of payment of booking amount so complainant is not entitled to claim timely payment discount on booking amount. Regarding issue of cost escalation charges, it has been submitted that these charges were duly agreed in booking form and were also explained to complainant via document annexed as Annexure R-21 to reply. Same is the submission in regard to maintenance charges (clause 4) and interest on delayed instalments. Regarding issue of club charges, it is stated





that facility of provisional club has been provided in the project and moreover, complainant is duty bound to pay these charges under terms of booking form.

8. It has been submitted that respondents had already received Rs 29,97,473/- pre-implementation of RERA which amounts to 73% of total sales value. It has also been stated 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. Further it has been submitted that area of unit as on date is 1548 sq ft and not 1643 sq ft as reflected in offer of possession.

9. Ld. counsel for complainant reiterated the submissions recorded in para no. 2 , 3 ,4 and 5 and further submitted that possession has already been taken his client on 19.03.2021. Ld. counsel for respondent reiterated the averments made in reply and further argued that possession was offered to complainant on 19.02.2020 and occupation certificate was received on 26.08.2020 but it is the complainant who instead of taking possession filed this frivolous complaint.

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

- (i) Basic facts of the matter are undisputed that the unit was booked by the complainant on 19.09.2009 and allotment letter was



issued by respondent on 16.03.2010. Respondent had offered possession to complainant on 19.02.2020 alongwith demand of Rs 8,49,895.44/-.

(ii) Factual position reveals that parties have entered into BBA on 01.06.2020 which is after 4 months of possession letter dated 19.02.2020. Respondent claimed to have sent the copies of BBA for signatures on 31.12.2010, in support postal receipt is attached as Annexure R-5 of written statement. On perusal of said document it is found that no tracking report has been annexed with that receipt nor any tracking number/reference number is assigned to it and in absence of relevant details, it cannot be taken/admitted as proof of copies of BBA being sent to complainant for signatures. So, plea of respondent that copies of BBA were sent to complainant is being rejected for want of documentary proof. On the other hand, complainant has also not proved with support of documentary evidence that it is due to fault of respondent that BBA was not executed between them. So, both parties are at fault for non-execution of BBA. Now, coming to issue of legal validity of BBA dated 01.06.2020 executed after possession letter dated 19.02.2020. It has been stated by respondent that after various requests by complainant said builder buyer agreement was prepared and executed. Complainant has also admitted the fact that





request was made from her side. Till the time of offer of possession dated 19.02.2020 complainant had already paid Rs 32,11,400.11/- without any objection/protest. Said act of complainant shows that informal conduct of respondent in respect of non-execution of BBA after allotment letter has been duly accepted by complainant. Moreover, it is pertinent to mention here that BBA dated 01.06.2020 was executed on standard format not in format prescribed under terms of RERA Act,2017 so it cannot be termed a valid agreement. In fact it is in contravention of provisions of RERA Act,2017 therefore, said agreement cannot be termed as legally valid and deserved to be quashed/set-aside.

(iii) Complainant's grievances pertains to club membership charges, , timely payment discount, delayed interest, charges for increased area, maintenance charges, cost escalation charges, delay interest and execution of conveyance deed.

(iv) Regarding issue of club charges, it is observed that facility of provisional club has been provided by respondent in the project instead of proper club so respondent is not entitled to claim these charges until proper facility of club becomes operational in the project. So, respondent is directed to refund these charges but he is



entitled to claim whenever club comes in existence in the project and complainant will remain bound to pay it.

(v) Regarding issue of awarding timely payment discount of Rs 17,500/- it has been rightly argued by respondent that as per clause 23 of booking form, said discount has to be provided on the amount to be paid after receipt of booking amount but not on booking amount. So, complainant is not entitled to claim these charges.

(vi) It has been alleged by the complainant that respondent had charged interest @18% for delayed instalments. Complainant in his petition had admitted that delay has occurred on her part in paying two instalments for which Rs 26,163/- has been charged as interest. It is pertinent to mention here that in payment receipt dated 30.11.2011 for interest shows amount of interest Rs 25,816/- instead of Rs 26,163/-, so amount of Rs 25,816/- is taken as correct one for delayed interest because there is no documentary proof attached in support of payment of Rs 26,163/-. It is correct that respondent had charged interest @18% , but in terms of section 2 (za) of RERA Act,2016 the rate of interest chargeable from the allottee by the promoter , in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. Accordingly, the complainant is liable to pay delayed interest @ 9.3% (SBI MCLR+2%



in terms of Rule 15 of HRERA Rules, 2017). Respondent has taken an amount of Rs 25,816/- whereas @9.3% he is entitled to Rs 13,339/-. Respondent is directed to refund the excess amount of Rs 12,477/- to complainant.

(vii) It has been alleged by the complainant that respondent has arbitrarily charged for increased area of 61 sq ft at the rate of Rs 2500 per sq ft whereas original rate per sq ft is Rs 2006.56/-. Respondent in his reply has admitted that area has been increased from 1487 sq ft to 1548 sq ft and complainant has already paid Rs 1,52,500/- for said increase in year 2010. Originally basic sale price of the unit was Rs 29,83,754.72/- with area 1487 sq ft and after increase in area, basic sale price got revised to Rs 31,36,254.72/- for area 1548 sq ft. Respondent has not provided any justification in his written statement for arbitrary revision in rate of per sq ft rate of unit. It is observed that respondent cannot arbitrarily change the per sq ft rate of unit without taking consent of complainant. Therefore, respondent is directed to charge for increased area 61 sq ft @2006.56/- which work out to Rs 1,22,400.16/- . Accordingly, respondent is directed to refund excess amount of Rs 30,099/- (1,52,500-1,22,400) to complainant.

(viii) In respect of cost escalation charges, this Authority has already given detailed reasoning in order dated 16.07.2018 passed in



complaint no. 113/2018 titled as Madhu Sareen vs BPTP Ltd. Reason and logic given thereof shall be applicable in this case also.

(ix) Complainant has argued that in terms of prospectus, the respondent was supposed to deliver possession by 01.10.2012 (3 years from date of booking 19.09.2009) whereas possession was offered on 19.02.2020 and had rather was actually handed over on 19.03.2021. Complainant is claiming delay interest for the period ranging from 01.10.2012 to 19.03.2021 on the ground that unit was not complete even in January, 2021 by relying upon photographs placed on record at pg 25,26 and 27 of written arguments. Argument of respondent is that the offer of possession was sent to complainant on 19.02.2020 after completing construction work of the unit alongwith demand of Rs 8,49,895.44. Occupation certificate was applied prior to it but same was received on 27.08.2020 and delay caused in receiving occupation certificate is on account of pandemic COVID-19 due to which documentary works came to halt. Complainant had duly made payment of Rs 7,24,647/- on 05.03.2020 in terms of settlement which in essence is a discount letter whereby discount of Rs 1,00,000/- was provided to complainant. Further, it has been argued that complainant herself had signed indemnity cum undertaking for taking vacancy physical possession of the unit annexed as Annexure-A/16 available





at pg no. 147 whereby it is clearly stated that complainant has taken physical vacant possession of the unit to her complete satisfaction after due inspection. Said document is undated however, attested by notary on 21.05.2020. In light of facts and circumstances, it is observed that possession was offered to complainant on 19.02.2020 alongwith demand of Rs 8,49,895.44/- against which respondent had provided her discount of Rs 1,00,000/- vide discount letter dated 05.03.2020, which has been referred as settlement by respondent although it is not settlement of dispute. Complainant in furtherance of acceptance of discount letter and offer of possession had made payment of Rs 7,24,647/- which is evident from the receipt dated 05.03.2020. Moreover, special compensation of Rs 1,24,902/- was also provided to her on account of delayed performance which is duly reflected in statement of account dated 17.09.2020. No objection of any nature was raised at the time of making payment towards offer of possession nor any defect existing in the unit was conveyed to respondent vide any document/communication. Besides this, maintenance charges were also paid on 05.03.2020 for the period of 19.06.2020 to 18.06.2021. Further complainant, upon assurance of respondent that possession will be given in next 30 days, had also paid Rs 2,19,000/- towards stamp duty charges for execution of



conveyance deed on 22.05.2020. Meanwhile, pandemic COVID-19 had disturbed the whole nation and various restrictions and lockdowns were imposed to curb it. But even after lifting of lockdown and restrictions, complainant did not receive actual physical possession of unit even after making full payment of Rs 41,55,046.39/- So, present complaint was filed by her on 15.10.2020 for the relief of possession alongwith delay interest and refund of excess amount taken by respondent on various heads already discussed in above paragraphs. Plea of respondent that complainant herself had signed indemnity cum undertaking that physical possession has already been taken by complainant is not supported with requisite documentary evidence to show/prove that possession was actually taken by complainant after making full payment. So, it is assumed that that complainant who had already paid Rs 41.55 lacs was not having any option but to sign on documents being presented to her for possession of unit.

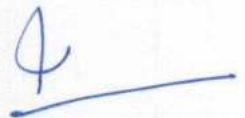
(x) Relevant questions arises here for adjudication is as to whether the offer dated 19.02.2020 is valid or not and what should be period of delay interest. Admittedly, possession was offered to complainant on 19.02.2020 but occupation certificate was received on 27.08.2020. As per version of respondent, they had applied for occupation certificate prior to said offer and received it on 27.08.2020 i.e after





gap of 6 months. Said gap was due to imposition of nationwide lockdown in view of COVID-19 pandemic. The Authority has no hesitation in accepting the occupation certificate dated 27.08.2020 granted by concerned department because COVID-19 pandemic has affected the whole nation and in order to curb it, various restrictions including lockdown for around 6 months were imposed and as such even after lifting of lockdown and restriction, the works of govt department got impaired as physical presence of officials in govt department was not allowed. So, the plea of respondent is reasonable. For these reasons, it is decided that the offer of possession can be deemed valid with effect from date of receiving of occupation certificate dated 27.08.2020.

(xi) Now, coming to question of delay interest. Plea of complainant is that unit was not complete even in year 2021, in support he is relying upon 2 photographs annexed with her written arguments. It is not evident from said photographs that they are of year 2021 and unit is lying incomplete. Another aspect for not accepting the plea of complainant is that unit had already received occupation certificate dated 27.08.2020 and complainant had already taken possession in March,2021 without any protest. When unit was not complete then why did complainant took possession without any protest. Moreover,



present complaint was pending before Authority but complainant did not bother to raise any allegation towards deficiency/non-completion of unit till final hearing of this matter. It was not even brought to notice of this Authority in any of previous hearings. Complainant's act of making full payment and taking over of possession without any protest leaves no scope for Authority to determine as to which party is at fault. Further it is to mention here that complainant did not raise any objection at any time of making substantial payments to respondent without execution of builder buyer agreement which implies that informal conduct of respondent had been duly accepted by complainant. For these reasons, the plea of complainant to award delay interest upto 19.03.2021 (date of actual handing over of possession) is not acceptable.

(xii) As per policy of this Authority in the cases where builder buyer agreement did not execute between the parties, the deemed date of possession should be reckoned as three years from the date by which substantial payments had been made by the complainant. As per the receipts annexed it is conceded that complainant had made payment of Rs. 12,89,802/- till 09.11.2010. Therefore, deemed date of possession in this case works out to be 09.11.2013 i.e., 3 years after 09.11.2010. Accordingly, delay interest payable to the complainant





any documentary proof for non-completion of unit, which is the sole plea of complainant to claim delay interest upto 19.03.2021 does not have strength. Complainant has failed to substantiate her averment with proper evidence. Therefore, complainant is entitled to delay interest for the period ranging from 09.11.2013 to 27.08.2020 in terms of Rule 15 of HRERA Rules i.e. SBI MCLR+2% (9.30%) and amount of Rs 1,24,902/- already provided by respondent towards compensation for delayed delivery of unit will be deducted from the liability of interest. Accordingly, delay interest has been got calculated from the Accounts Branch of this Authority which works out to Rs 15,92,244/-and after deduction of Rs 1,24,902/-, payable delay interest works out to Rs 14,67,342/-. Said amount shall be paid by respondent to complainant within 45 days of uploading of this order.

(xiii) The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 34,46,845.95/-. Said total amount has been worked out after deducting charges of taxes paid by complainant on account of EDC/IDC amounting to Rs 2,24,202.44/-, Rs 28,851/- on account of VAT ,Rs 1,32,163/- paid on account of EEDC and Rs 2,19,000/- paid on account of stamp duty and maintenance charges of Rs 78,168/- and interest on delayed payment of Rs 25,816/- from total paid amount of Rs 41,55,046/- 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.


(xiv) In respect of maintenance charges, it has been argued that respondent cannot claim said charges without handing over actual possession of unit. Record reveals that complainant had paid these charges on 05.03.2020 for the period of 19.06.2020 to 18.06.2021 without any protest. Now, complainant prays for refund of maintenance charges on the ground that these charges were supposed to be levied w.e.f from date of taking over of actual possession of unit. Argument of respondent is that construction of the unit was complete at time of offer of possession 19.02.2020 and complainant in furtherance of acceptance of it, made full payment on 05.03.2020 alongwith maintenance charges, so today he cannot dispute it. Fact remains that actual possession has been taken by complainant on 19.03.2021





without any protest. Maintenance charges have been paid by her on 05.03.2020 for the period 19.06.2020 to 18.06.2021 in furtherance of offer of possession dated 19.02.2020. But valid offer of possession was made by respondent to complainant on 27.08.2020 as observed in aforesaid paragraphs and accordingly, maintenance charges have to be levied from the date of valid offer of possession irrespective of the fact that possession has been taken by allottee or not because respondent is duty bound to maintain the project even if possession is not taken by allottee. Therefore, respondent is directed to adjust the amount of maintenance charges for the period starting from 27.08.2020 instead of 19.06.2020.

(xv) Complainant has prayed in her petition to issue direction to respondent to get conveyance deed executed. Amount of Rs 2,19,000/- has already been paid by complainant in lieu of stamp duty charges on 22.05.2020. However, at the time of final hearing it was not specified by any of the party that conveyance deed got executed or not whereas possession was taken in March, 2021. In case, conveyance deed is not executed between the parties, then respondent is directed to get it done within 30 days of uploading of this order as amount for said deed has already been paid by complainant on 22.05.2020.



11. Respondent is directed to comply with the directions issued vide this order and to make refund or adjustment of amount as stated in above paragraphs within 45 days of uploading of this order.

12. Case 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 SIHAG**  
**[MEMBER]**

