



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1302 OF 2019

Asha Wadhwa and Vijay Wadhwa

....COMPLAINANTS(S)

VERSUS

BPTP Limited and others

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 03.03.2022.

Hearing: 11th

Present: Shri Satyajeeet Singh, Ld. counsel for the Complainant.

Shri Hemant Saini and Shri Himanshu Monga, Ld. counsels 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.

2. Brief facts as averred by the complainants were allotted Plot bearing No. R-2 with 502 sq. yds. On 11.05.2007. Plot Buyer Agreement was

executed on 10.05.2007. In terms of Clause 22.1 of the BBA possession was to be delivered within 24 months sanction of the service plans of the colony simultaneous to the execution of sale deed. Basic sales price was Rs. 48,94,500/-. Complainant purchased the said plot from the original allottee after entering into an agreement to sell dated 15.04.2013. Nomination letter dated 16.05.2013 was issued in favor of the complainant and respondent acknowledged that an amount of Rs. 50,51,656/- stands paid in respect of the said plot. In support of the averment that an amount of Rs. 54,10,781.76 having been paid, complainant has annexed statement of accounts dated 20.09.2016 issued by the respondent.

3. Further facts of the matter are that complainant sent various e-mails to the respondent dated 19.08.2016 and 02.09.2016 for handing over possession but no response was received from the respondent. Complainant received an e-mail dated 21.09.2016 from the respondent stating that possession will be offered by the end of October 2016 but the same was not offered. Complainant also visited the office of the respondent but nothing worked out and possession was not offered to the complainant. Complainant wrote several e-mails dated 25.04.2018, 05.10.2018 and 14.02.2019 for possession of their plot but it was not offered to her. Statement of accounts dated 20.09.2016 were provided by the respondent wherein Rs. 54,10,781.76 were shown as already paid by the



complainant and an amount of Rs. 3,59,125/- calculated @18 % p.a. was shown as interest payable by complainant to respondent. Feeling aggrieved, present complaint has been filed by the complainant seeking direction against respondent to deliver possession of unit along with delay interest.

4. Respondents in their reply have admitted allotment of booked unit in favour of the complainant. They have also admitted that said Floor Buyer Agreement had been executed. The respondents have not denied the payments made by the complainant. The respondents however submit as follows: -

(i) Affidavit filed by complainant is not properly executed as the same is not properly notarized and not on Rs. 10 stamp paper.

(ii) Since the unit in question is a plot measuring 419 sq.mtrs. As per section 3(2)(a) of RERA Act, registration is not required.

(iii) Progress of the project is hampered and slowed down because govt Authorities have failed to develop 24 meters wide road till date. There are few portions of the road which are yet to be acquired by state govt. Authorities.

(iv) Complainants cannot seek relief qua the agreement that was executed prior to coming into force of the RERA Act. According to the respondents only the provisions of agreement shall be binding upon the parties to such an agreement.




(v) Original allottees made huge defaults in making payments and interest charged is as per terms of duly executed plot buyer agreement.

(vi) Respondents have already offered the possession of plots to many of its customers in the vicinity and basic infrastructure pertaining to sewer, storm, water supply stands laid and street light poles are erected.

(vii) Respondent have admitted the fact that an amount of Rs. 54,10,781.76/- stands paid in respect of the plot and it is stated that interest is charged on account of delays and defaults committed by the original allottee.

5. Learned counsel for the complainant reiterated the facts of the case as already written in para 2 and 3 of this order. Ld. Counsel for the respondent also took his defense through his written statement. He verbally stated that there is some dispute regarding the plot of the complainant and it is pending before Hon'ble High Court therefore possession of complainant's allotted plot cannot be given to her. He quoted an order dated 05.08.2019 by the Hon'ble High Court in CWP No. 21112 of 2019 titled as Mukesh@ Manoj Kumar and others vs. State of Haryana and others wherein it has been ordered by the Hon'ble High Court that status quo shall be maintained.



6. Authority has gone through written submissions made by both the parties as well as have carefully examined their oral arguments. It 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) Another argument taken by the respondent is that the State Government have failed to provide 24-meter road. If any promised facility has not been provided by the State Government, the respondents should pursue their claim against the State Government. No promoter has a right to commence a project or to accept consideration amount without ensuring that requisite facilities and infrastructure will be created by the authorities and departments concerned within a reasonable period of time. It is only after being assured of availability



of such facilities that the promoters should launch their project. For the default on the part of any third party, the allottees of the project who have invested their life savings on the assurance of the promoters cannot be held liable or put to any dis-advantage.

(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.

(v) Objection with respect to affidavit is also rejected as present proceedings are summary proceedings.

(vi) Deemed date of possession as specified in the agreement is within 24 months of sanction of the service plans of the colony simultaneous to the execution of sale deed. Authority observes that it is fair and just that deemed date of possession should be reckoned as three years from the date of execution of plot buyer agreement that is 3 years from 15.04.2013. It works out to be 15.04.2016.

(vii) As per the averments of Id. Counsel for the respondent there is a stay by Hon'ble High Court and therefore possession of plot no. R-02 is not possible to be given to the complainant. No document, however has been placed before the Authority to establish that the alleged stay granted by Hon'ble High Court is

applicable on the land on which allotted plot of the complainant is situated. However, keeping in view the statement and to settle the matter, respondent is directed to offer 2-3 alternative plots in the same vicinity at the already agreed price and to pay delay interest to the complainant till the date of giving such possession.

(viii) Delay interest: Complainants have only attached statement of accounts dated 12.09.2016 as proof of paid amount of Rs 54,10,781.76/- in their complaint and nomination letter dated 16.05.2013 acknowledging an amount of Rs. 50,51,656/- having been paid by respondent. So, an e-mail dated 08.04.2022 was sent to the complainants to submit the receipts of payments so as to verify the date on which such payments were made to enable the Authority to calculate the payable interest thereon. It is the duty of the complainant to submit proper record at the time of filing of complaint but even after an opportunity was given to file receipts complainant has failed to submit the receipts. It is made clear that review/rectification of this order shall not be allowed in future on any such ground.

In the absence of receipts Authority will decide the case on the basis of best evidence placed on record by the complainant. Delay interest on the amount of Rs. 51,51,656/- will be calculated from the date of Endorsement/ nomination letter that is 16.05.2013 till the date of order and on the remaining



amount of Rs. 3,59,125/- interest will be calculated from the date of statement of accounts dated 20.09.2016 till the date of order. Complainant has also paid EEDC of Rs. 6,90,752/-, EDC of Rs. 5,14,048/- and IDC of Rs. 2,23,390/-. These amounts are not being taken into account for calculating delay interest for the reasons mentioned in the succeeding paragraphs.

Accordingly, the respondent is liable to pay the upfront delay interest of Rs. 31,49,474/- to the complainant towards delay already caused in handing over the possession. Further, on the entire amount of Rs. 39,82,591/- monthly interest of Rs. 32,472/- shall be payable up to the date of actual handing over of the possession after obtaining occupation certificate of the alternate plot being accepted by the complainant. The Authority orders that the complainant will remain liable to pay balance consideration amount to the respondent when an offer of possession is made to him.

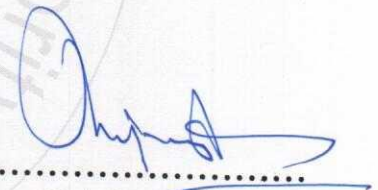
The delay interest mentioned in aforesaid paragraph is calculated on total amount of Rs 39,82,591/-. Said total amount has been worked out after deducting EEDC amounting to Rs 6,90,752/-, EDC amounting to Rs. 5,14,048/- and IDC amounting to Rs. 2,23,390/- from total amount of Rs. 54,10,781.76 /- paid by complainant. These amounts are not payable to the builder and are rather required to be passed on by the builder to the concerned department/authorities. If a builder does not pass on this amount to the



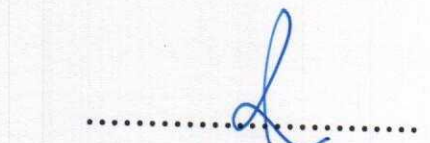
concerned department the interest thereon becomes payable to the department concerned and the builder for such default of non-passing of amount to the concerned department will himself be liable to bear the burden of interest. In other words, it can be said that the amount of taxes and EDC, EEDC and IDC collected by a builder cannot be considered towards determining the interest payable to the allottee on account of delay in delivery of possession.

7. The Authority further orders that while upfront payment of Rs. 31,49,474/- as delay interest shall be made within 90 days of uploading of this order on the website of the Authority, the monthly interest of Rs. 32,472/- will commence w.e.f. 04.03.2022, payable on 04.04.2022 onwards.

Disposed of in above terms. File be consigned to record room after uploading order on the website of the Authority.



RAJAN GUPTA
(CHAIRMAN)



DILBAG SINGH SIHAG
(MEMBER)