



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1311 OF 2021

Raj Kumar

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 30.03.2022

Hearing: 1st

Present: -

Mr. Ramesh Malik, counsel for the complainant through video conference

Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Facts of the complainant's case are that on 25.09.2009 he booked plot in respondent's project under 'Present and Future Scheme' by paying booking amount of ₹2,85,000/-. Thereafter, plot measuring 402 sq.

yards bearing no. D-397 in project named 'Parsvnath City, Rohtak' was allotted to the complainant. No builder buyer agreement has been executed between the parties till date. It has been contended that basic sale price of plot was ₹21,10,500/- and complainant by the year 2011 had paid a total amount of ₹30,24,549/- to the respondent. Possession of the plot was to be offered within twenty four months from the date of final payment which was made on 10.10.2011 and at the most possession should have been handed over by April 2014 but in spite of making all the payments, respondent failed to hand over the possession of the plot by said date. Moreover, respondent has charged EDC/IDC from the complainant but same has not been deposited by respondent with the Government. It has been submitted that after lapse of approximately 11 years from the date of booking, vide letter dated 30.06.2020, offer of possession of a new plot bearing no. D-271 admeasuring 401 sq. yards was made to the complainant along with final statement of accounts. But on the site no infrastructure has been provided by respondent. There is no availability of electricity, sewerage, road and potable water connection. Furthermore, in final statement of accounts issued by respondent along with letter of offer of possession, respondent has not given interest for the period of delay caused in offering possession. Also, respondent has charged GST form the complainant which he is not liable to pay for the reason that if possession had been given on time, there would have been no occasion for the complainant to pay the same. Therefore,



present complaint has been filed seeking possession of the plot with mandated infrastructure, delay interest and directions to respondent not to charge GST.

2. Learned counsel for complainant further argued that the offer of possession made on 30.06.2020 is merely a symbolic offer of possession and is not a valid offer of possession as there exists several infrastructural deficiencies at site. But even if said offer of possession is presumed as valid, there has been delay of more than six years and respondent is liable to pay delay interest for the same as has already been ordered by the Authority in several other cases. He has referred to clauses 8(c) of plot buyer agreement executed with similarly situated allottees wherein it has been mentioned that in the event of delay of possession of plot beyond period stipulated, subject to force majeure, respondent shall pay the buyer compensation @12/- per sq. mtr. per month for the period of delay.

He prayed that since there has been delay of more than six years from deemed date of possession, respondent may be directed to pay the complainant interest for delay in handing over the possession.

3. Respondent filed reply on 31.12.2021 contending that complainant applied for registration of plot and subsequently on 08.06.2010 he was provisionally allotted plot bearing no. D- 397 admeasuring 402 sq. yards in project namely 'Parsvnath City, Rohtak'. Vide letter dated 11.12.2012, two copies of Plot Buyers's Agreement (PBA) were sent to the

9

complainant for signing the same with a request to return it to the respondent. However, complainant never returned the copies of the PBA. Respondent has admitted payment made by the complainant. He has, however, called the complainant a defaulter in payment of overdue installments. Respondent has further stated that due to modifications and approvals of revised layout plan by competent Authority, DTCP, Haryana, on 23.12.2019, the plot initially allotted to complainant was changed from D-397 to D-271 and offer of possession of new plot was given to the complainant on 30.06.2020. Respondent has stated that delay caused in handing over the possession is not intentional and is rather due to reasons beyond the control of respondent company. With regard to status of the project respondent has submitted as follows:

- (i) The respondent promoter applied for grant of license to develop a plotted colony on land measuring 118.188 acres in Sector-33 and 33A, Rohtak vide application dated 22.06.2006 and application dated 07.05.2007. Against the said applications license no. 36 of 2010 dated 07.05.2010 was granted which was valid upto 06.05.2014.
- (ii) A land acquisition process was initiated by State Government on 13.02.2008 with the issuance under Section 4 of the Land Acquisition Act, 1894 vide which some portion of this licensed colony was also proposed to be acquired for HSIIDC. The land owning company filed objections under Section 5A and without opportunity of hearing,

declaration under Section 6 was issued on 13.12.2008. Land was acquired vide two separate awards dated 13.07.2009 and 17.08.2009. The Government of Haryana has a land release policy date 22.10.2007 and the respondent promoter/land owning companies were expecting release of land under the said policy.

(iii) On 24.01.2011, DTCP, Haryana issued a show cause notice/provided opportunity of hearing before delicensing of land measuring 14.15 acres.

(iv) A Civil Writ Petition No. 6196 of dated 02.04.2012 was also filed in respect of the acquisition by the respondent-promoter which was dismissed in limine for the reasons of delay and laches.

(v) Since, 14.15 acres land could not be released, the same was de-licensed vide Town & Country Planning Department on 31.10.2014 out of total licensed area measuring 118.188 acres.

(vi) Now after de-licensing of 14.15 acres, total project area reduced to 104.038 acres. On 08.01.2015 respondent-promoter submitted revised layout plan of the reduced colony. Since their license was valid upto 06.05.2014, they also applied for its renewal on 07.10.2015, 29.09.2017 and 22.04.2019. On 19.06.2018 their pending application for approval of revised lay out plan and renewal of the license were considered by the department, and on 23.12.2019 a revised layout plan was approved followed by approval of zoning plan dated 28.02.2020

9

and demarcation plan dated 17.03.2020. For three months due to outbreak of Covid-19 they could not commence the process of offering possession to the allottees which they did on 30.06.2020 after ease of COVID restrictions.

(vii) It has been averred that 300 conveyance deeds have already been executed and 500 allottees have settled their accounts.

Respondent has further submitted that development works namely: potable water line, sewer line, strom line, drainage, road network, street lights have been developed. Project has a temporary electricity connection. Internal development works were completed by 2012-2013 and basic infrastructure has already been developed at site. Respondent, therefore, claimed that due to force majeure conditions delay has been caused in handing over possession. It has also been contended that complainant is trying to avoid taking over of possession and hence, respondent company is entitled to holding charges.

4. Learned counsel for respondent argued that delay in handing over the possession has been caused due to delay in renewal of license by DTCP and non-approval of revised layout plan which was pending with the Authority since 2014. Learned counsel further argued that offer of possession was made to the complainant on 30.06.2020 and complainant is liable to pay all statutory charges including GST. Furthermore, she argued that allegations of complainant that infrastructure facilities are not available,

are not tenable for the reason that internal development works are complete and basic infrastructure has already been developed at site since 2013. She further argued that if the complainant is not happy with offer of possession made to him, he is at liberty to withdraw from the project and take refund of the amount paid by him.

5. After hearing both parties and going through documents placed on record, Authority observes and orders as under:

(i) The plea of force majeure taken by respondent has already been declined in bunch of cases with lead case no. 1253 of 2020 titled Naresh Kumari versus M/s Parsvnath Developers Ltd. vide its order dated 30.11.2021. Authority reiterates its decision taken in above said case, and declines to agree with the plea of force majeure taken by respondent in respect of delay caused in offering possession. Hence, complainant is entitled to interest on the amount paid by him from deemed date of possession till the date of offer of possession at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 9.30% (7.30% + 2.00%).

(ii) Respondent had offered possession of the plot to the complainant on 30.06.2020. At that time, provisions of RERA Act were applicable and hence respondent was liable to pay delay interest to the

complainant and incorporate the amount of delay interest in the final statement of accounts issued to the respondent. Since, respondent did not incorporate the delay interest in its final statement of accounts, said offer can't be said to be a valid offer of possession. However, contention of respondent for not incorporating delay interest is that delay has been caused due to force majeure conditions and he is not liable to pay interest for the delay caused in offering possession. Said argument has already been declined in preceding para and learned counsel for the complainant has agreed that delay interest be given to complainant till 30.06.2020, therefore respondent is directed to pay complainant delay interest till the date of offer of possession made by him i.e. 30.06.2020.

(iii) Plot buyer agreement has not been executed between the parties. Complainant has claimed that possession was to be delivered within 24 months from the date of final payment which was made on 10.10.2011. However, complainant has not annexed the payment receipts with the complaint to substantiate his claim except for one receipt of ₹2,85,000/- dated 25.09.2009 which was for advance registration in 'Present and Future' project of the respondent. Respondent on the other hand has annexed customer ledger dated 13.12.2021 as Annexure R-3 which depicts that last payment of ₹2,08,250/- was made by the complainant on 29.03.2013 and

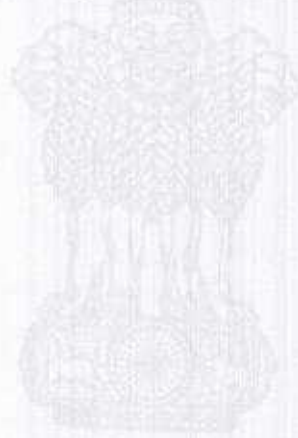
therefore, going by the assertion of the complainant, deemed date of possession for the purpose of calculating delay interest should be reckoned as two years from the date of final payment made by the complainant. Accordingly, deemed date of possession in this case works out to be 29.03.2015 i.e., 2 years after 29.03.2013. Accordingly, delay interest payable to the complainant shall be calculated from this date till the date of offer of possession made to the complainant i.e. 30.06.2020.

(iv) Another issue to be adjudicated is the amount on which interest is to be calculated. Complainant in his pleadings has stated that a sum of ₹30,24,549/- has been paid to the respondent till date. However, in the final statement of accounts annexed as Annexure C-3 with the complaint, total amount received by the respondent has been depicted as ₹30,24,649/-. Therefore, it can be presumed that complainant has inadvertently mentioned the amount paid to the respondent as ₹30,24,549/- instead of ₹30,24,649/-.

(v) In regard to issue of GST being charged by respondent it is observed that the Government introduced GST in the year 2017. Since the deemed date of possession in this case was prior to coming into force of GST, respondent is not justified in demanding GST charges from the complainant. Said amount is not payable by complainant.

6. Authority has got calculated the interest payable to the complainant and accordingly amount of delay interest payable to the complainant calculated at the rate 9.30% from deemed date of possession 29.03.2015 till 30.06.2020 works out to ₹14,80,446/-. Respondent is accordingly directed to issue fresh statement of accounts incorporating therein the delay interest so calculated by this Authority and shall not charge GST from the complainants.

7. Complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]

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DILBAG SINGH SIHAG
[MEMBER]