



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 1030 OF 2021

Tapas Kumar Dey & Another

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

**Date of Hearing:** 15.07.2022

**Hearing:** 5<sup>th</sup>

**Present: -** Mr. Naren Pratap Singh, learned counsel for the complainant

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

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

1. Facts of complaint are that apartment no. T19-802, 8<sup>th</sup> floor, tower T-19, admeasuring 1855 sq.ft. was booked by complainants in the year 2013 in a project named 'Parsvnath Pleasant, Dharuhera, Rewari' being developed by respondent. Builder Buyer agreement was executed between the parties on 28.10.2013. A copy of original has been annexed at pages 14-30 with the complaint.

Basic sale price of apartment was ₹52,18,115. In accordance with the payment plan, complainant by the year 2013 had paid a total amount of ₹17,07,302/-. The complainant has annexed copies of payment receipts at pages 33-40.

2. As per clause 10(a) of builder buyer agreement executed between the parties, construction of apartment was to be completed within 36 months plus grace period of six months i.e by 28.04.2017. Complainants have referred to provisions of annexed BBA in support of their contentions. Complainants allege that the project is far from completion. No offer of possession has been made despite lapse of more than 4 years period from the deemed date of possession. Legal notice dated 11.12.2020 was also sent to the respondent asking for possession of the flat or refund of the amount deposited but respondent did not reply to said notice. Since there is no hope of completion of the project, complainants have prayed for relief of refund along with applicable interest.

3. Learned counsel for the complainants has filed his memo of appearance in Court and contended that project appears to be abandoned by the respondent and there is no hope that it will be completed in near future. Further, complainants have lost confidence and trust in the respondent. Therefore, complainants intend to withdraw from the project. In this background, present complaint has been filed seeking refund of the amount deposited with respondent along with interest.





4. Respondent in his reply has admitted the fact of booking of apartment, the agreed sales consideration, the area and location of the apartment as well as the payment of ₹17,07,302/- made by the complainants. The respondent further states that project is being developed in terms of statutory approvals granted by competent authorities and that license(s) no. 129-132 and 134-138 of 2007 were granted by competent authority on 03.03.2007. Respondent has applied for renewal of said licenses. Respondent has referred to clause 9(c) of the flat buyer agreement wherein it has been stipulated that in the event of delay caused on account of force majeure conditions, complainant shall be paid compensation @ ₹5/- per sq.ft. Respondent has also stated that it has completed all development work in the project including all infrastructure works and basic amenities. On 25.05.2016, Office of Senior Town Planner (STP), Gurgaon had confirmed to DTCP, Haryana that all the development works of the project site as per approved layout plan are complete. It has been submitted that basic facilities and infrastructure like roads, service roads, services including sewerage line, storm water lines, temporary electric lines, water lines have already been constructed/installed. Further, it has been contended that time is not essence of the contract and respondent is trying to complete the project for which purpose they have applied for registration with RERA. Respondent has further contended that there is no intentional delay on his part, rather project has been delayed for the reasons beyond his control. Respondent company is





putting his best endeavours to streamline and complete the project. In brief, respondent has raised certain technical objections but has admitted all the facts alleged by complainants.

5. Learned counsel for respondent further stated that basic infrastructure and facilities have already been developed at site and number of families have been residing happily. Therefore, this is not an abandoned project. Respondent is trying to complete the remaining project and make offer of possession of units to allottees. She further stated that allowing refund at this stage will hamper progress of the project.

6. Authority has gone through written submissions as well as oral submissions made by both the parties and it has come to the following conclusions:

- (i) That the license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. Booking of the apartments have been done from the year 2008 onwards. This project of the respondent is in a serious difficulty. They have applied for registration of project with RERA being an ongoing project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken





place for the last over six years. In its project jurisdiction, this Authority has passed following order dated 22.03.2021:

“1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.

2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent company may obtain a copy of the report from the registry of the Authority if they so desire.

3. Opening the arguments Shri Shekhar Verma, Advocate, learned counsel for the promoter-developers reiterated that upon filing of an application for registration the Authority is duty bound to register the project. In support of his contentions he drew the attention of the Authority towards provisions of Section 5 of the RERA Act, 2016 and stated that as per law, the Authority is duty bound to either register the project within a period of 30 days or reject the application for reasons to be recorded after giving an opportunity to be heard to the promoter. Further, if the Authority fails to grant registration or to reject the application within a period of 30 days, the project shall be deemed to have been registered.

4. The Authority does not agree with the contentions of the learned counsel Shri Shekhar Verma for the reasons that the Authority is not duty bound to register the project of a promoter who is defaulter on multiple counts and whose license has not been renewed by the Town & Country Planning Department. Further, if the promoter has failed to complete the project for





more than a decade and no construction work is taking place for past 7-8 years, and more importantly there is no hope for scope for its recommencement in near future, the Authority cannot register such a project. Registration of a project implies that the Authority has satisfied itself about credentials of a promoter and it is satisfied that the project will be completed within the stipulated time frame. Registration of a project by the Authority is an assurance to all future allottees and investors that the Authority will ensure that their money is safe and the project will be completed in time. In this case the promoters have yet to pay 127 crores EDC to the State Government which they are failing to pay last many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arranged by the promoters for recommencing the construction activities.

Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these reasons, it cannot and should not register the project at this stage.

6. The Authority after consideration is of the view of the facts of the matter that application filed by the promoters is liable to be rejected. In the event of the application being rejected, alternate options of handing over of the project to the association of allottees can be explored. However, before resorting to this option one last opportunity is granted to the promoters to arrange funds for recommencing of the project construction and also submit monthly plan for its execution. If by the next date adequate funds for commencing construction work are not put in the escrow account and a plan of action for completion of the project is not submitted, the Authority will be



constrained to issue a show cause notice for rejection of the application.

7. Adjourned to 03.05.2021.”

(ii) Authority has offered numerous opportunities to respondents to commence development works of the project. Repeated directions have been given to them to deposit some money in the Escrow Account but respondents have failed to comply with any of the orders. Respondents have been making repeated assurances but have been failing to keep them.

(iii) Further fact of the matter is that due date of offering possession was 2017. Already delay of more than 4 years has taken place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if respondent had commenced its development or an application for grant of occupation certificate was filed. On the contrary, in this case development is not taking place at all, nor is there any plan of action for commencing it. On account of multiple defaults on the part of respondent, Authority has not even registered the project. In fact, a thought process is going on to hand over the project to association of allottees, which in other words mean that Authority considers that respondents will not be able to complete the project at their level.





7. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of complainants. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹17,07,302/- along with interest 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 9.80% (7.80% + 2.00%) from the date amounts were paid till today. Accordingly, total amount along with interest calculated at the rate of 9.80% works out to ₹31,97,180/- as per detail given in the table below:

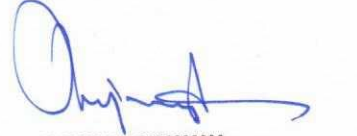
S.No.	Principal Amount	Date of payment	Interest Accrued till 15.07.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹5,37,935/-	22.07.2013	₹4,73,881/-	₹10,11,816/-
2.	₹11,69,367/-	05.09.2013	₹10,15,997/-	₹21,85,364/-
<b>Total</b>	<b>₹17,07,302/-</b>		<b>₹14,89,878/-</b>	<b>₹31,97,180/-</b>

Respondent is directed to make the entire payment of ₹31,97,180/- within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.





8. The 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]

