



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 3023 OF 2019

Ram Niwas Gupta

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta

Chairman

Dilbag Singh Sihag

Member

**Date of Hearing:** 07.07.2022

**Hearing:** 15<sup>th</sup>

**Present:** - Mr. Amit Gupta, Representative for the complainant through video conference

Ms. Rupali S. Verma, learned counsel for the respondent no.1 through video conference

#### **ORDER (DILBAG SINGH SIHAG – MEMBER)**

While perusing case file, it is revealed that complainant has derived his booking rights through M/s Shrey Projects Pvt. Ltd. who had booked a residential plot in the respondent project 'Parsvnath City Karnal' under 'P and F scheme' situated in Karnal, Haryana. M/s Shrey Projects Pvt. Ltd. had paid

advance money of ₹1,65,000/- to the respondent on 31.12.2009 for allotment of plot. Much later as it had sold its booking rights of said plot to Mr. Naveen Kumar and present complainant Ram Niwas Gupta had subsequently purchased the booking rights from Naveen Kumar on 17.04.2012. Plot bearing no. A-273 having tentative area of 239 sq. yards was allotted to the complainant on 28.03.2012. Respondent no.1 has offered possession of the plot to the complainant on 09.11.2013 along with a demand of full and final payment and the same was deposited by the complainant via cheque dated 06.12.2013. A copy of letter of offer of possession and acknowledgement of cheque deposited are attached as Annexure P/6 and Annexure P/7.

2. Further, vide letter dated 20.09.2014, complainant was informed by the respondent no.1 that layout plan was proposed to be revised and invited objections on the revision of the said layout plan. Complainant sent his objections dated 24.10.2014 against revision of layout plan through an email to the respondent no.2 i.e., Department of town and Country Planning, Haryana. On 12.06.2015, complainant visited the office of respondent no.2 and apprised them that respondent no.1 had allotted plot on 11.07.2012 to the complainant much before grant of license and a different plot was offered to the complainant against the plot allotted to the complainant. Initially, plot allotted to the complainant was a rectangular plot whereas present plot is an odd-sized plot. Copy of letter of objections received by office was annexed as Annexure P/20.

3. It has been further submitted that respondent no.1 has not executed conveyance deeds of the plot even after the lapse of six years from the date of offer of possession, Therefore, Complainant has prayed before this Authority relief of possession of the plot along with delay interest. Respondent no.1 shall be further directed to execute conveyance deed of the plot as per original layout plan.

4. On 28.01.2020, Respondent no.2, Directorate of town & Country Planning, Haryana has submitted in its reply that DTP, Karnal vide memo dated 22.06.2015 has intimated to the department that the plot A-273 was allotted to complainant on 28.03.2012 and layout plan of the said project was sanctioned on 11.07.2012. This means that plot was allotted to the complainant even before respondent no.1 has obtained the license for the project. So, it was observed by the DTCP that respondent no.1 has pre- launched his project much before grant of license and accordingly a penalty of Rs 4,09,26,502/- was imposed upon the respondent promoter for violation under 7(i) of Haryana Development & Regulation of Urban Areas Act,1975.

5. Respondent no.1 has filed his reply on 24.01.2020. Averments made by the respondent no.1 in their reply are summarised as follows:

I. The payment plan of the complainant was a time linked plan and complainant has made payment of the amount of ₹ 22,48,605/- against basic selling price ₹ 16,37,150/- till date to the respondent company. A copy of ledger is annexed as Annexure R-3.

II. That Respondent along with the associate companies had acquired land admeasuring 126.792 acres falling in revenue estate of sector 35, Karnal, Haryana. Respondent initially had obtained license no.73 of 2012 dated 11.07.2012 for an area admeasuring 50.564 acres from the DTCP, Haryana. A copy of license is annexed as Annexure R-1. Subsequently, with the increase in the project area by another 30.572 acres, minor changes took place in the original layout plan and accordingly, an application was submitted for approval of revised layout plan of 81.136 acres and same was approved vide memo dated 29.08.2014. A copy of approval of revised layout plan and license is annexed as Annexure R-2.

III. Offer of possession of booked plot has been sent to the complainant dated 09.11.2013 along with final statement of account. A copy of the offer of possession along with final Statement of Account is annexed as Annexure R-4. Respondent further submitted that as per the policies, for finalization of the layout plan, objections were invited from all existing allottees and similarly, respondent followed the process. However, complainant had filed a complaint before the Directorate of town & Country Planning, Haryana, Chandigarh regarding the allotment of plot made by the respondent before grant of license of the project. She further stated that the said objections raised by the complainant had nothing to do with approval of final layout plan as plot allotted to the complainant was at same place in the unrevised and revised layout plan as there being no change in the location and facilities. On 15.02.2017, DTCP had notified composition fees

of Rs 4 Crore to regularize the allotment made in favour of Mr. Ram Niwas Gupta and review-cum- representation was filed against it on same date in the office of DTCP, Haryana followed by the representation dated 19/20.11.2019. On 30.12.2019, review-cum-representation dated 15.02.2017 and 20.11.2019 had been dismissed against which respondent had filed a statutory appeal dated 03.01.2020. The primary ground taken in appeal by the respondent was that as per records, allotment of plot in favour of the complainant was made on 05.04.2012 after submitting the compliance report of the terms and conditions of letter of intent on 11.03.2012. License was granted to the respondent on 11.07.2012 but before that he had complied with all the terms and conditions of the letter of intent. Further it has been pleaded in the appeal that as per composition policy dated 14.06.2012, composition fees should be charged per sq. mtr and not on acreage. Therefore, composition fees charged by the DTCP on the entire project area of 50.564 acres for regularization of the allotment of 250 sq. yards in favour of the complainant was completely illegal and arbitrary in nature.

IV. It has further submitted that pending revision of layout plan, renewal of license was not done and consequently, he was not able to offer the possession to the complainant. However, colony has been developed and all necessary facilities were available except sewerage treatment plant and permanent electricity connection for which temporary arrangements has also been made by the company. She further claimed that 280 allottees have been offered possession in the first phase of 50.564 acres, but no evidence has been placed on record.

V. That in view of abovementioned facts, this complaint is neither maintainable nor tenable in the eyes of law.

6. On the perusal of previous orders passed by Authority, it is revealed that dimensions of the plot offered to the complainant were not clear as per record, so, vide order dated 28.01.2021, Authority directed both the parties to submit exact dimensions and location of the plot offered to the complainant before and after the revision of layout plan. In compliance of the said order, learned counsel for the respondent had submitted a site plan of disputed plot with dimensions of the plot offered to the complainant and on perusal of the documents, it was revealed that plot allotted to the complainant is different from the plot offered to the complainant as offered plot is an odd-sized five-sided plot and rear set back of the plot also stands reduced. Thus, complainant was given full liberty to accept the same plot or not. Further, he was directed to inform whether he wished to take the plot offered to him or an alternate plot or get refund of the amount deposited by him along with interest. On 21.12.2021, during the course of hearing, learned counsel for the complainant had chosen to explore options of an alternate plot in the same project. On 08.02.2022, learned counsel for the respondent had offered an alternate plot bearing no. A-19, 305 sq. yards to the complainant during the course of hearing. However, on 26.04.2022, learned counsel for the complainant has submitted that alternate plot was not acceptable to him as it was also an irregular plot. Therefore, vide order dated 26.04.2022, Authority has directed the respondent to provide a list of all the other similar located vacant plots to the

complainant who may choose a plot from the same and inform this Authority respectively.

7. Today, representative for the complainant stated that alternate plot offered by the respondent bearing no. A-19 admeasuring 305 sq. yards is now acceptable to him. But he has contested charging of the maintenance charges unless the respondent delivers possession of the plot.

8. Learned counsel for the respondent, on the other hand has submitted that complainant is not intending to pay maintenance charges which he is liable to pay as per the provisions of the RERA Act.

9. Considering written submissions of both parties as well as perusal of the documents, Authority observes that there has been an inordinate delay of more than eight years in delivering possession of the plot to the complainant. Therefore, Authority directs the respondent to handover possession of the plot to the complainant along with delay interest. Authority further directs the respondent to execute conveyance deeds without any further delay.

As far as the maintenance charges is concerned, Authority observes that every allottee is liable to pay maintenance charges as an when he gets physical possession of the booked property. So, complainant is liable to pay such charges from the date he takes the physical possession of the plot.

Authority further directs the respondent-promoter to pay delay interest to the complainant which will be calculated from the deemed date of possession, Now, moot question arises as which date is to be taken as the deemed date of

possession as complainant has nowhere mentioned in his written submissions about the plot- buyer agreement. Respondent has admitted in his reply that the plot- buyer agreement was executed on 18.11.2012, However, no Plot Buyer Agreement has been placed on record by both parties. So, in order to ascertain the deemed date of possession, Authority has asked the complainant to send Plot-buyer agreement and via email dated 23-08-2022, complainant has sent plot buyer agreement. On perusal of document, it is revealed that plot buyer agreement was executed between the parties on 29.11.2012. and as per clause 10(a) of the PBA, due date of possession was within 24 months from the date of signing of the agreement. Therefore, deemed date of possession comes out to 29.11.2014 from which delay period has started and further delay interest should be calculated accordingly.

Another question needs to be settled is up to which date delay interest should be calculated. Generally, delay interest shall be calculated from the deemed date of possession till actual date of offer of possession. However, offer of possession made by the respondent company on 09.11.2013 was not a valid offer of possession as plot allotted to the complainant was a rectangular plot but offered plot was an odd sized plot having five sides. So, Authority is of view that respondent will be liable to pay delay interest till such date when alternate plot offered to the complainant has been accepted by him. Therefore, delay interest has been calculated up to 07.07.2022. Hence, Authority directs the respondent to pay to the complainant delay interest from the deemed date of possession i.e.,



29.11.2014 till passing of the order i.e., 07.07.2022 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 9.70% (7.70%+2.00%). Accordingly, delay interest which has got calculated by the Accounts Branch of the Authority works out to ₹ 12,86,555/- except EDC & IDC charges.

Respondent is directed to make payment of ₹ 12,86,555/- to the complainant within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation and Development) Rules, 2017.

10. **Disposed of.** Files be consigned to record room after uploading of this order on the website.



RAJAN GUPTA  
[CHAIRMAN]



DILBAG SINGH SIHAG  
[MEMBER]