



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 328 OF 2021

Alka Sibbal

....COMPLAINANTS(S)

VERSUS

Countrywide Promoters Private Ltd.

....RESPONDENT(S)

**CORAM: Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 17.08.2022

Hearing: 6th

Present: Shri Ankit Sibbal, Ld. counsel for the Complainant through video-Conferencing.

Shri Hemant Saini and Shri Himanshu Monga, Ld. counsels for the Respondent

ORDER: (DILBAG SINGH SIHAG-MEMBER)

1. Captioned complaint was heard at length on 03.02.2022 detailed order was passed stating therein view of the Authority. Said order is reproduced below:-

Case was fixed for arguments. While initiating his arguments learned counsel for the complainant narrated brief facts of the case. Builder Buyer Agreement (BBA) was entered between the parties on 16.10.2010 for unit no. AQ5-07-SF in the project Park-81 of the respondent. In terms of the said agreement, respondent was obliged to deliver possession to the complainant latest by 15.10.2012. Complainant had already paid an amount of Rs. 38,00,461.35/- against total sales consideration of Rs. 27.84 lakhs. Respondent had offered possession of the unit on 15.12.2018 with additional demand of Rs. 7,33,294.94/-. Complainant alleges that amount of Rs. 1,18,345.72/- for enhancement of external development charges was paid by him under protest. Stamp duty amount was taken in advance whereas registry was to be done in an year. Besides, there are structural defects in the unit as well.

2. He has sought following reliefs: -

- (i) Refund of excess amount paid by the complainant.
- (ii) Interest on excess amounts.
- (iii) Interest on delay charges.
- (iv) Registration of conveyance deed in his favor.

3. Learned counsel for the complainant drew the attention of the Authority towards various e mails dated 09.08.2019, 14.08.2019, 21.01.2020 which revealed that unit was not ready in 2019. Therefore, on 14.08.2019 respondent had apologized for delay caused in actual handing over of possession and finally in 2020, unit was claimed to be ready. He argued that he had made substantial payments in 2010 but possession was delivered to him in 2021 so he is entitled for delay interest for this period as per provision under section 18 of RERA Act 2016.

4. Whereas learned counsel for the respondent has orally argued that conveyance deeds have already been executed in the present case and all the obligations as per section 11 of RERA Act 2016 stands discharged. Therefore, already concluded contracts should not be reopened. Fact of conveyance deeds

already been executed has not been contested by learned counsel for the complainant.

5. On perusal of the record, it is revealed that the fact that conveyance deeds have already been executed has not been stated in the written pleadings submitted by either of the parties. Both parties are directed to place on record copy of conveyance deeds, since no record has been placed before the Authority regarding conveyance deeds.

Authority prima facie is of the view that with the execution of conveyance deeds and acceptance of offer of possession of booked property, all obligations on the part of promoter stands discharged. However, learned counsel of the complainant was not convinced with the argument of learned counsel of respondent as well as Authority's view in this regard. He was arguing that complainant has already suffered severely for a decade or so without any house. Therefore, execution of conveyance deeds cannot absolve the obligation of the promoter to compensate by paying delay interest and further compensation as per provisions of RERA Act 2016.

6. After hearing both the parties, Authority observes that issue involved in this case pertains to claiming of delay interest by the complainant-allottee for the delayed delivery of possession by the respondent after execution of conveyance deeds. Said issue has also been involved in some other cases bearing complaint no. 367/2021 and 625/2021 wherein tentative observation of Authority has been expressed distinctly that after execution of conveyance deeds obligations and rights of allottee-promoter towards each other stands fulfilled and at that stage concluded contracts should not be re-opened for awarding of delay interest.

However, said cases are pending for final arguments. So, one opportunity is granted in interest of justice to both parties to put forth their arguments citing therein judgement of Hon'ble higher Courts in order to enable the Authority to laid down proper precedent on the issue involved. For further adjudication, following issues are framed for discussion and decision in this case:

- (i) Whether already concluded contracts can be re-opened at this stage when execution of conveyance deeds and possession of booked property has already been concluded?
- (ii) Whether complainant is entitled to claim delay interest and compensation in terms of provision of BBA after execution of conveyance deed between the parties?
- (iii) Whether complainant has raised any protest while executing conveyance deed?
- (iv) Whether parties are justified in their acts of claiming delay interest and at what rate?

2. Ld. counsel for the complainant had filed his written submissions on 18.04.2022. Conveyance deed dated 20.07.2021 has been placed on record. Ld. counsel for the complainant has referred to judgment dated 24.08.2020 passed by Hon'ble Supreme Court in Civil appeal no. 6239 of 019 titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Pvt. Ltd. wherein Hon'ble Court has ruled that it would be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance, to forsake the right to claim compensation. He further stated that in said case Hon'ble Supreme Court has held that flat purchasers will continue to have right to make claim for compensation for the delayed handing over of the flats even after execution of conveyance deeds. Learned counsel for the



complainant argued that in light of said judgment respondent should be directed to pay to complainant interest for delay in handing over the possession.

3. In rebuttal, learned counsel for the respondent argued that conveyance deed had already been executed between the parties and now complainant has no locus standi to file present complaint for the reason that after handing over of possession and execution of conveyance deed, mutual obligations of both parties stood discharged. Further, he argued that judgment dated 24.08.2020 relied upon by learned counsel for complainant is distinguishable from facts and circumstances of present complaint. In said judgment there was element of coercion on the part of developer in getting the complainant to execute conveyance deed. However, in present complaint conveyance deeds was executed by free will of the complainant and except bald assertions, no document or any material has been placed on record to question the circumstances leading to execution of conveyance deed. Therefore, he has prayed for dismissal of this complaint.

4. Present case was adjourned awaiting final outcome of complaint no. 367/2021 titled as Pawan Jeet Singh Kohli & Anr. vs Parsavnath developers Ltd. Said case had already been decided by the Authority vide its order dated 27.04.2022. Relevant part of the order is reproduced below: -

“After hearing contentions of both parties and going through documents placed on record, it is observed that

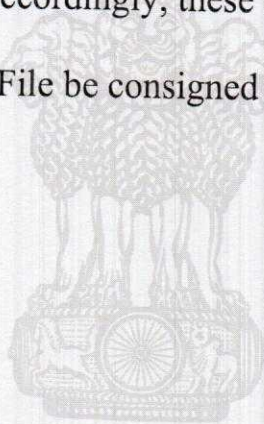
complainants have already taken possession of the plots and got conveyance deeds executed in their names on 08.04.2019. They should have pressed for the amount of delay interest at the time of execution of conveyance deeds. Although complainants had written letters to respondent seeking delay interest but all those letters were written before execution of conveyance deeds. These complaints have been filed nearly two years after execution of conveyance deeds. Execution of conveyance deed is equivalent to entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. In present complaints, there is no mention of delay interest in the conveyance deeds and by omitting to do so, complainants cannot be allowed to seek delay compensation at this stage by approaching this Authority. As of today, contractual obligations between the parties stand discharged. Authority further observes that some act or incident must signify conclusion of contractual relationship between the parties. Handing over of lawful possession and execution of conveyance deed brings contractual relationship to an end. Thereafter only certain statutory rights like rectification of defects or satisfactory maintenance etc will survive. Permitting to reopen concluded contracts will not be in public interest. It will lead to endless litigation. Therefore, Authority reiterates its views already expressed in order dated 19.10.2021 and decides to dismiss the present complaints. Accordingly, these complaints are dismissed.

5. Disposed of. Files be consigned to record room and orders be uploaded on the website of the Authority.”

5. After hearing submissions of both parties and perusing relevant record, Authority in consonance with the principles laid down in order dated

27.04.2022 passed in complaint no. 367/2021 mentioned herein above, observes that as of today, contractual obligations between the parties stand discharged. Handing over of lawful possession and execution of conveyance deed brings contractual relationship between the parties to an end. Thereafter only certain statutory rights like rectification of defects or satisfactory maintenance etc will survive. Permitting reopening of concluded contracts will not be in public interest. It will lead to endless litigation. Therefore, Authority reiterates its prima facie views already expressed in order dated 03.02.2022 and decides to dismiss present complaint. Accordingly, these complaints are dismissed.

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)