



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 884 OF 2019

Bhavna Kasturia

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 05.05.2022

Hearing: 13th

Present: - Ms. Bhavna Kasturia, complainant through video conference
Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (RAJAN GUPTA - CHAIRMAN)

1. This matter was heard first on 16.07.2019 wherein after noting facts of the complaint an interim order was passed directing the respondent

to return to the complainant an amount of ₹10,36,652/- which was the amount paid by complainant to bank as EMIs from 2015 onwards till March 2019. Respondent was also directed to pay future EMIs to bank regularly. Said order dated 16.07.2019 is reproduced below:

“1. The captioned complaints are taken up together as the facts are similar and relates to the same project of the respondent. Complaint case no. 884 of 2019 has been taken as lead case.

All the cases relate to the claim of refund and compensation. In Complaint case no. 605 and 1379 of 2019 the agreement is for construction linked plan whereas in Complaint no. 884 of 2019 it is EMI subvention plan. Learned counsel for complainant in complaint no. 605 of 2019 stated that the copy of reply received by him is incomplete. Respondent undertook to supply a complete copy to the complainant.

2. In brief the complainant's case is that she booked a 2BHK flat in respondent's project on 28.01.2008 by paying a booking amount of Rs. 1,38,497/-. The unit was booked as per EMI subvention scheme of the builder wherein down payment of Rs. 4,15,490/- was made by the complainant and a bank loan of Rs. 22,15,944/- was got disbursed from Axis bank directly to builder on 26.03.2008. Thus, a total amount of Rs. 26,31,434/- was paid to the respondent till March 2008 out of the basic sale price of the unit amounting to Rs. 27,69,930/-. As per the EMI agreement dated 04.08.2008 the respondent was supposed to pay the EMI's for the bank loan till the possession of the flat was handed over to the complainant. The respondent paid EMI's only till April 2015 and has stopped making payment of EMI since then, as a result, the burden of paying EMI has fallen on the complainant and she has been paying EMI's thereafter. No possession has been offered till date nor, allegedly, the construction has started at the site of the project. Therefore, after lapse of more than 10 years from the date of booking, the complainant has lost faith in respondent and has no hope of getting the flat. She prays for refund of the down payment of Rs. 4,15,490/- along with interest of Rs. 7,47,882/- @18% from Feb 2008 to Feb 2019. Further, she prays that the builder/respondent should pay outstanding bank loan of Rs.17,85,325/- and also the EMI's which the respondent was

supposed to pay to bank but due to default on their part have been paid by complainant to bank since 2015 till date. This amount works out to be Rs. 10,36,652/- upto the date of filing of complaint i.e March 2019.

3. The respondent in its written statement admits that the complainant has paid Rs. 26,31,434/- till date. Learned counsel for respondent Ms. Rupali Verma conceded that the project consists of 6 towers but no construction has started in Tower no. T1, T2 and T3. However, 40% of super structure upto 4th floor has been constructed in towers T4, T5, and T6. As the construction of Towers T1, T2 and T3 was yet to commence, the complainant's flat has been relocated from tower T3-304 to Tower T5-304 and the same was communicated to complainant vide letter dated 29.04.2017.

4. Learned Counsel for respondent also drew the attention of this Authority towards orders dated 02.05.2019 passed by Hon'ble Haryana Real Estate Appellate Tribunal (Tribunal in brief) in lead appeal case no. 06 of 2018 titled as "**Sameer Mahavar Versus M.G. Housing Pvt. Ltd.**" and stated that in view of the said order this Authority does not have jurisdiction to deal with this and other complaints in which relief of refund of the amount paid along with compensation has been sought.

5. First of all, the Authority shall deal with the orders passed by Hon'ble Tribunal with regard to jurisdiction of the Authority to deal with such matters. The orders of the Hon'ble Tribunal shall be implemented by the Authority in toto and all such matters as these complaints shall be placed before the Adjudicating Officer for disposal.

The Authority, however, observes that at present no Adjudicating Officer is appointed in the Authority. The Authority had appointed Sh. Anil Kumar Panwar, Member of the Authority, as Adjudicating Officer because he fulfils all qualifications for being appointed as Adjudicating Officer. The State Government, however, has reconsidered this matter in accordance with an advice tendered by Learned Advocate General, Haryana and has asked this Authority to appoint an Adjudicating Officer in accordance with law and has held that the appointment of Sh. Anil Kumar Panwar as Adjudicating Officer is legally not sustainable. In furtherance of the advice of the State Government an advertisement in the newspapers has been issued for inviting applications for appointment of Adjudicating Officer. This process is likely to take some time.

In the meantime, the State Government is also considering formulation of Rules for appointment of Adjudicating Officer. Consequently, at present the post of Adjudicating Officer to be able to deal with these matters on merits is lying vacant. Accordingly, this complaint as well as other complaints of this nature shall be placed before the Adjudicating Officer when appointed.

6. The Authority however observes that Real Estate Regulatory Authorities have been created by the Parliament for regulation of the real estate sector of the economy. Whenever through any source an information about a real estate project is placed before the Authority that the project is not being developed as per provisions of the Act or the promoters are violating the obligations and duties cast upon them by the Act, the Rules and the Regulations, the Authority is duty bound to take its cognizance and pass appropriate orders as per law. Some of the important functions and responsibilities of this Authority in this regard are reproduced below:

“Section 34: The functions of the Authority shall include—

- (a) to register and regulate real estate projects and real estate agents registered under this Act;***
- (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;
- (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act.

Section 35(1): Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules of regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.

Section 36: Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been



committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

Section 37: The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Section 38(1): The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.”

7. Admittedly the apartments were booked in the year 2008 or so. The agreements with the allottees were executed somewhere around the same time. Admittedly the possession of the apartments was to be delivered within 36 months i.e. by the year 2011 or so. As per available information the project is comprised of six towers No. T-1, T-2, T-3, T-4, T-5 and T-6. No construction at all has commenced on tower T-1, T-2 and T-3. As per the statement of the learned counsel for the respondent only 40% of the super structure work upto 4th floor in respect of Tower T-4, T-5 and T-6 has been accomplished. Admittedly the license of the project was valid upto 2017 and the same has not been renewed there-after. It is not known whether an application for its renewal has been filed and whether the respondents are defaulting in the payment of EDC etc. This project has been registered with this Authority vide registration No.132 of 2017. In the application for registration of the project the date of completion has been stated to be 31st December, 2019.

8. In view of the aforesaid discussion, it appears unlikely that the developers will be able to complete the project even by December, 2019. Under the aforesaid provisions of the Real Estate (Regulation & Development) Act, 2017, this

Authority has been vested with the responsibilities of not only to address the grievances of the allottees but is also supposed to monitor progress of the real estate project in the interest of all the allottees and larger interest of the sector. This Authority is also supposed to take cognizance of the problems of non-complainant allottees who also may be facing similar predicament as the complainant allottees. The number of non-complainant allottees is usually many times more than the complainant allottees.

Accordingly, before proceeding further in the matter, the respondents are directed to submit following information to the Authority to enable it to pass further directions for protecting the interests of the allottees of the project:

- (i) Total land of the project.
- (ii) No. of apartments to be constructed in each of the 6 towers.
- (iii) Number of apartments sold/allotted in each tower.
- (iv) Total money collected from all the allottees put together.
- (v) The amount of money invested on the project.
- (vi) If less money invested than the amount has been collected, whether the balance amount has been deposited in the RERA Escrow account or not. All details in this regard should be furnished.
- (vii) The development works carried out since registration of the project.
- (viii) The timelines for completion of the project upto the scheduled date of completion.

10. The Authority also considers it appropriate that the complainant Bhavna Kasturia in complaint No.884 of 2009 also deserve interim relief because monthly EMI's which were to be paid by the respondents to the bank have not been paid since 2015. In exercise of the powers vested in the Authority by Section 36 of the Act, it directs that the respondents henceforth shall pay EMI instalments to the bank regularly. Further the complainant has been forced to pay the EMI instalments from the year 2015 till date amounting to Rs. 10,36,652/-. Therefore, the respondents shall return the amount paid by the complainant to the bank from 2015 till date before the next date of hearing.

3. Adjournd to 29.08.2019."

2. During course of hearings, respondent paid to the complainant a sum of ₹10,36,652/- which was the amount of EMIs paid by complainant from April 2015 to March 2019.

Thereafter vide order dated 26.08.2021, it was observed that respondent has been defaulting in payment of EMI's to the bank despite repeated directions issued by Authority. Therefore, respondent was given last opportunity to comply with orders passed by Authority and was further directed to pay an amount of ₹5,35,052/- to the complainant which was the amount of EMI's paid by complainant from March 2019 till date of said order i.e. 26.08.2021. Respondent was further redirected to pay future EMI's to bank regularly failing which Authority will be constrained to attach the bank account of respondent company with a direction to concerned bank that amount of EMI shall be deducted from the attached account and be directly paid to bank.

3. Consequently, respondent paid a sum of ₹5 lac against a sum of ₹ 5,35,052/-, which was ordered to be paid. Till date respondent has reimbursed to the complainant EMIs paid by her to bank from 2015 to August 2021 i.e. 15,36,652/-. However, a sum of ₹35,052/- still remains payable. Case was again heard at length on 02.02.2022 and a detailed order was passed with direction to complainant to place on record proof of outstanding loan amount against her and prove that down payment amount of ₹4,15,490/- was paid by her. Complainant was also directed to submit



calculations of EMIs paid by her to bank which she wants to be refunded to her. Said order is reproduced below:

“Initiating her pleadings, complainant submitted that she booked a 2BHK flat in respondent’s project on 28.01.2008 by paying a booking amount of ₹1,38,497/-. Said unit was booked as per EMI subvention scheme of the builder whereby down payment of ₹4,15,490/- was made by the complainant and a bank loan of ₹22,15,944/- was got disbursed from Axis bank directly to builder on 26.03.2008. Thus, a total amount of ₹26,31,434/- was paid to the respondent till March 2008 out of the basic sale price of the unit amounting to ₹27,69,930/-. As per EMI agreement dated 04.08.2008, respondent was supposed to pay EMI’s for the bank loan till handing over of possession of the flat to the complainant. However, the respondent paid EMI’s only till April 2015 and had stopped making payment of EMI since then. As a result, burden of paying EMI had fallen on the complainant. Anyhow she managed to pay EMI’s thereafter.

It is pertinent to mention here that no possession has been offered till date nor, allegedly, construction has started in the tower wherein her flat is located. Considering above facts complainant has lost faith in respondent and has no hope of getting the flat even after lapse of more than 10 years from the date of booking. She prays for refund of the down payment of ₹4,15,490/- along with interest, apart from relief that the builder/respondent should pay outstanding bank loan. She also prayed that EMI’s which respondent was supposed to pay to the bank and default thereof compelled her to pay to the bank since 2015 and the same be refunded to her with interest.

2. During the course of the hearings, Authority had directed the respondent to refund complainant EMI already paid by her to bank and pay future EMI to the bank. Respondent has however refunded EMI paid by the complainant to bank from 2015 till August 2021 but has not started payment of EMI to bank directly despite several directions being issued by the Authority.

3. Complainant further stated during hearing that a sum of ₹6,10,307/- is outstanding loan as on date against complainant. Besides, a sum of ₹1,14,222/- has again been paid by complainant as EMIs after August 2021 till date. She requested that respondent be directed to clear entire outstanding

loan and down payment amount of ₹4,15,490/- plus EMI paid by her after August 2021 be refunded back to her with her.

4. Learned counsel for the respondent stated that as on date, Authority does not have jurisdiction to award refund of the amount paid by the complainant. So, present case be adjourned awaiting decision of SLPs before Hon'ble Supreme Court.

5. After hearing both the parties, Authority observes that there is no specific stay in the present case, so present case will be decided on its own merits. So, complainant is directed to place on record the proof of outstanding loan amount against her and shall prove on next date that down payment amount of ₹4,15,490/- was paid by her to bank. Complainant is also directed to submit calculations of EMIs paid by her to bank which she wants to be refunded to her. Final arguments on the case will be heard on next date.

6. Case is adjourned to 05.04.2022."

4. In compliance of above order, complainant has submitted required documents vide email dated 04.04.2022 and hard copy of same was filed on 21.04.2022. As per said documents, total outstanding bank loan against complainant as on 02.04.2022 was ₹15,90,404/-. EMIs paid by complainant to bank from September 2021 to March 2022 amounted to ₹1,33,259/-. It has been submitted by complainant that respondent is liable to pay her a sum of ₹1,33,259/- along with balance amount of ₹35,052/- i.e. total amount of EMIs payable to complainant is ₹1,68,311/-. Further proof of down payment of ₹4,15,490/- has also been submitted by complainant.

5. The matter was again taken up today and complainant argued that a sum of ₹1,33,259/- has again been paid by her as EMIs to bank from September 2021 till March 2022 and poof of same has already been attached

in documents submitted on 21.04.2022. She further argued that this is 13th hearing of the matter and respondent has failed to comply with the orders of the Authority despite specific directions being given to him on various occasions to regularly remit the amount of future EMIs in the bank account of the complainant but he has been defaulting to pay the same because of which entire burden of paying the EMIs has fallen of her and she has been paying the same to the bank. She requested that respondent may be directed to refund the entire amount of ₹4,15,490/- paid by her as down payment with interest, clear the outstanding loan of ₹15,90,404/- and refund the amount of EMIs paid by her to bank from September 2021 which was responsibility of respondent to pay. Further, she requested that respondent may be directed to pay interest on EMIs paid by her from April 2015 till date as respondent has failed to reimburse the same to her in time. She has submitted the calculations for the same and as per said calculations interest on delayed EMI has worked out to ₹3,22,662.85/- calculated at the rate 9.30% from April 2015 to April 2022.

6. Respondent in his reply has admitted the fact of booking of the apartment under EMI subvention scheme, agreed sales consideration, area and location of apartment as well as payment of ₹26,31,434/- made by complainant. It has been contended that project is being developed in terms of statutory approvals granted by competent authority. It has been submitted



that licence no. 1205-1206 of 2006 dated 06.10.2006 had been duly issued by department and project is duly registered with Authority vide registration no. 132 of 2017 dated 28.08.2017. Further respondent company has submitted its revised building plans with concerned authority and final building plans have been withheld by the department on account of purely bilateral issue with one of the allottee due to which entire project has been suffering, and said allottee is not even interested in the project as he is seeking only refund. It has also been submitted that EDC, IDC, conversion charges etc have been paid in full to the Competent Authority. There is no intentional delay on part of respondent and project has been delayed for reasons beyond control of respondent company. Time is not essence of contract. In brief, respondent had raised certain technical objections but has admitted all the facts alleged by complainant.

7. Learned counsel for respondent submitted that project was being developed in terms of statutory approvals granted by competent authority. She further stated that respondent is determined to give possession of booked flat to the complainant, and if deposited amount of the complainant is refunded to her then entire project will be halted.

8. After hearing contentions of both parties and going through documents on record, Authority observes that due date of offering possession was 2011. Already delay of approximately 11 years has taken



place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if the project was completed or an application for grant of occupation certificate had been filed. On the contrary, in this case, project is not complete, nor there is any plan of action for completing it. For these reasons, a case is clearly made out to allow relief of refund as sought by complainant.

9. Complainant in the present case has made down payment of ₹4,15,490/- and a bank loan of ₹22,15,944/- was got disbursed from Axis bank directly to respondent. As per documents submitted by complainant on 21.04.2022, total outstanding bank loan against complainant as on 02.04.2022 was ₹ 15,90,404/- and the amount of EMIs payable to complainant by respondent is ₹ 1,68,311/-. Accordingly, respondent is directed as follows:

(i) To refund the complainant an amount of ₹4,15,490/- 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 9.40% (7.40% + 2.00%) from the date amounts were paid till today. Accordingly, total amount along with interest calculated at the rate of 9.40% works out to ₹9,71,406/- as per detail given in the table below:



S.No.	Principal Amount paid by complainant	Date of payment	Interest Accrued till 05.05.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹1,38,497/-	28.01.2008	₹1,85,900/-	₹3,24,397/-
2.	₹2,76,993/-	22.02.2008	₹3,70,016/-	₹6,47,009/-
Total	₹4,15,490/-		₹5,55,916/-	₹9,71,406/-

(ii) To pay the complainant outstanding loan amount of ₹15,90,404/-.

(iii) To refund the complainant amount of EMIs paid by her from September 2021 to March 2022 i.e. ₹1,33,259/- along with balance amount of ₹35,052/- i.e total amount of EMIs payable to complainant is ₹1,68,311/-.

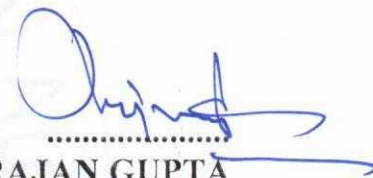
(iv) As per clause 5 of EMI agreement executed between the parties on 04.08.2008, respondent was liable to reimburse EMIs to complainant on half yearly basis on production of satisfactory proof of payment of the EMIs by customer to the bank till offer of possession of the unit but he has failed to do so after March 2015. Therefore, he is liable to pay interest for said amount. However, it is not possible for the Authority to calculate interest on EMIs paid by complainant, therefore, it is held that complainant is entitled to interest on the amount of EMIs paid by her from April 2015 till March 2022 and respondent is directed to pay said interest to complainant 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 9.40% (7.40% + 2.00%) from the date the amounts become due till date of its payment.

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

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]