



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 997 OF 2021

Ashish Kamboj

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 16.08.2022

Hearing: 4th

Present: -

Mr. Jagdeep Sheoran, learned counsel for the complainant

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

ORDER (RAJAN GUPTA - CHAIRMAN)

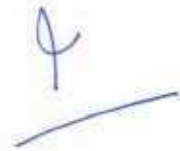
1. Case of the complainant is that he had booked a residential plot in the project named as "Parsvnath City Karnal" of the respondent situated in sector 35, Karnal, Haryana and paid ₹1,60,000/- as booking amount through cheque on 03.05.2011. Initially, plot no.C-492 measuring 381 sq. yards was allotted to the complainant but on the request of the complainant, respondent


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had revised the allotment and Plot no.c-384 admeasuring 239 sq. yards was allotted to him in the same project on 20.06.2015. A copy of revised allotment letter is annexed as Annexure P1. Plot Buyers Agreement was executed between the complainant and the respondent on 20.06.2015. As per clause 3(a) of Plot Buyers Agreement, the basic sale price of the plot was ₹21,51,000/- . Complainant has paid ₹25,41,040/- against the basic sale price till 05.10.2016. Payment of the money by complainant is duly proved from a copy of ledger account, which has been annexed with the complaint on page no. 61.

2. Complainant has further submitted that respondent company has executed this agreement with biased contractual terms which are illegal, unilateral and discriminatory in nature. As per clause 6(a) of the agreement, if complainant defaults in making payments in time and commits any breach of terms and condition of the agreement, the agreement will be terminated by the respondent and in the eventuality of such termination, the amount paid by the complainant to the extent of the earnest money will be forfeited by respondent. Therefore, complainant had no other option left but to pay further instalments as and when demanded by the respondent and now nothing is pending to be paid on the part of the complainant. A copy of Plot Buyers agreement is annexed as Annexure-P2.

3. It has been further stated that as per clause 10(a) of Plot- Buyer Agreement, possession was to be delivered within 24 months from the date of



agreement by 20.06.2017. But, possession of the plot has not been handed over to him till date. Respondent has failed to fulfil its contractual obligations and not delivered possession of the plot within agreed time period. Therefore, complainant has sought relief of possession of plot along with delay interest for the period of delay caused in handing over the possession.

4. Respondent filed his reply on 11.10.2021. Respondent has admitted execution of plot buyer agreement on 20.06.2015. He further stated that complainant has opted for time linked payment plan to pay further instalments. However, he has argued that complainant has defaulted in making timely payments and various reminders dated 15.07.2015 and 10.08.2015 were issued to him for making payment but he never replied to any of the reminder letters. Copies of reminder letters are annexed as Annexure R-5(colly). Respondent has further submitted that due to pending revision of layout plan, non-renewal of license and certain other force majeure conditions, they were not able to offer possession to the complainant. However, colony has been developed and all necessary facilities are available except sewerage treatment and permanent electricity connections. It has been further stated that the offer of possession has already been offered to the complainant along with final statement of accounts. A copy of the offer of possession of the plot dated 09.07.2021 and final statement of accounts are annexed as Annexure R-1.



5. The matter was last heard on 31.05.2022 whereby Authority has held that delay interest is ~~admissible and respondent~~ was directed to revise statement of accounts issued to the complainant and issue fresh statement of account including therein amount of interest payable to the complainant. Said order dated 31.05.2022 is reproduced below:

1. Complainant in the present case is seeking possession of the plot booked by him in project named 'Parsvnath City, Karnal' being developed by respondent. Learned counsel for the complainant stated that respondent has offered the possession of the plot on 09.07.2021 with final statement of accounts but said offer is not valid as certain illegal amounts were claimed by respondent which were never part of the agreement executed between the parties. Moreover, in said statement of accounts, interest for delay in handing over the possession of the plot has not been included.

2. Learned counsel for respondent argued that delay interest has been given to the complainant as per terms of agreement executed between the parties. She further stated that similar complaints relating to same project are listed for hearing on 30.06.2022, so present case may be adjourned to said date.

3. It is observed that Authority has already laid down in its various cases that in case of failure on part of allottees and promoters to discharge their respective obligations, they are liable to pay interest to each other for such failure as per provisions of Rule 15 of HRERA Rules and not as per terms of agreement executed between them. Therefore, in the present case also respondent is liable to pay interest to complainant for delay in handing over the possession in terms of Rule 15 of HRERA Rules. Accordingly, respondent is directed to revise statement of accounts issued to the complainant and issue fresh statement of account including therein amount of interest payable to the complainant as per directions of the Authority.

4. Adjourned to 30.06.2022.



6. Today, learned counsel for the complainant stated that respondent has not complied with above said order till date and respondent has not issued revised statement of accounts to complainant. He has further stated that in case of delay in payments, respondent charges penalty at the rate of 24% per annum but in delay of possession respondent give ₹10/- per sq. yard only, which is discriminatory to the rights of complainant. He further stated that respondent has also demanded an affidavit cum undertaking along with final payment which is illegal and on arbitrary demands and the same is not acceptable to complainant. Therefore, he prayed that possession may be given to complainant without executing of any such affidavit-cum undertaking along with the fresh statement of account which includes interest for delay caused in handing over the possession.

7. Learned counsel for the respondent on the other hand, stated that the project is fully complete and they have offered the possession to many allottees in the same project till date. She further stated that respondent has offered possession to the complainant in 2021 but the same was not accepted by him till date.

8. In view of above submissions and averments made by the parties, it is observed that admittedly offer of possession was made to complainant on 09.07.2021 along with final statement of accounts without incorporating delay interest for delay in handing over possession. 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. Therefore, Authority reiterates the order dated 31.05.2022 and directs the respondent to issue the fresh offer of possession within 45 days along with fresh statement of accounts incorporating therein delay interest accrued for delay in handing over the possession.

In regard to execution of affidavit cum undertaking and indemnity by complainant, it is observed that any such undertaking to be obtained from the complainant at the time of delivery of possession will not be accepted by Authority as it may jeopardize complainants' rights vested in terms of the agreement already executed between the parties. Accordingly, directs the respondent to handover possession of the plot without insisting on any such undertaking.

9. Authority has got calculated delay interest from deemed date of possession i.e., 20.06.2017 till the date of passing the order i.e., 16.08.2022 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 10.00% (8.00%+2.00%). Accordingly, delay interest which has got calculated by the

Accounts Branch of the Authority works out to ₹ 10,54,756 /- except EDC & IDC charges.

If respondent fails to handover the possession within 45 days, then he will be liable to pay further monthly interest to the complainant till actual handing over of possession which works out to ₹17,915/- per month.

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



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]