



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 309 OF 2021

Baljeet Malik

....COMPLAINANTS

VERSUS

Parsvnath Developers Ltd.

....RESPONDENTS

CORAM: Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 16.08.2022

Hearing: 7th

Present: - Mr. Ramesh Malik, counsel for the complainant

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

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Facts of the complainant's case are that on 26.09.2009 he booked plot bearing no. C-116 measuring 402 sq. yards in a project named



'Parsvnath City, Rohtak' being developed by respondent. It has been contended that total consideration of plot was ₹30,97,008/- and complainant by the year 2013 had paid an amount of ₹34,95,553/- to the respondent. No builder buyer agreement has been executed between the parties till date. However, respondent had executed plot buyer agreements with other similarly situated buyers in the month of December 2012. It has been submitted that despite making payment of substantial amount to respondent, he has did not give possession of the plot which was to be delivered in 24 months. Moreover, respondent has charged EDC/IDC from the complainant but same has not been deposited by respondent with the Government. It has further been contended that after making payment in respect of the plot, complainant came to know that he has been defrauded by respondent because the plot allotted to him did not belong to respondent. In fact, the land on which plot C-116 was shown to be carved out in the map was in the ownership of HSIIDC and a litigation by way of CWP no. 6196 of 2012 was going on between the subsidiary company of respondent promoter and State of Haryana, and respondent's claim of said land was dismissed on 02.04.2012, and land stood transferred to HDIIC. Therefore, complainant stopped paying further installments and made representations many a times to local office of respondent company at Rohtak which did not yield any result, and ultimately complainant paid the amount on the demand of respondents. Due to litigation with HSIIDC respondent lost about 15 acres of



land of their share. It has been submitted that after lapse of approximately 11 years from the date of booking, vide letter dated 30.06.2020, offer of possession of a new plot bearing no. B-055 admeasuring 395.11 sq. yards was made to the complainant in lieu of old plot no. C-116 having area of 402 sq. yards along with final statement of accounts. Copy of said offer of possession along with final statement of accounts is annexed with complaint as Annexure C3 and C-4.

It has further been submitted that respondent had charged a sum of ₹1,09,545/- as preferential location charges for plot bearing no. C-116 but new plot offered to complainant is an ordinary plot and respondent has adjusted the charges of preferential amount. Further, at the site no infrastructure has been provided by respondent. There is no availability of electricity, sewerage, road and potable water connection. Furthermore, in the final statement of accounts issued by respondent along with letter of offer of possession, respondent has not given interest for the period of delay caused in offering possession. Also, respondent has charged GST form the complainant which he is not liable to pay for the reason that if possession had been given on time, there would have been no occasion for the complainant to pay the same. Therefore, present complaint has been filed seeking possession of the plot with mandated infrastructure, delay interest, directions to respondent not to charge GST, compensation for decrease in size of plot and refund of preferential location charges of ₹1,09,545/-.



2. Learned counsel for complainant further argued that the offer of possession made on 30.06.2020 is merely a symbolic offer of possession and is not a valid offer of possession as there exists several infrastructural deficiencies at site. But even if said offer of possession is presumed as valid, there has been delay of several years and respondent is liable to pay delay interest for the same as has already been ordered by the Authority in several other cases. He further argued that facts of present case are similar to complaint case no. 1311 of 2021 titled as Raj Kumar versus M/s Parsvnath Developers Ltd. which has been decided by the Authority on 30.03.2022, and requested that present case may be disposed of in terms of said order.

He prayed that since there has been delay of 11 years from date of booking, respondent may be directed to pay to the complainant interest for delay in handing over the possession.

3. Respondent filed his reply on 19.10.2021 contending that complainant on 08.06.2010 was allotted plot bearing no. C-116 admeasuring 402 sq. yards in project namely 'Parsvnath City, Rohtak'. Basic selling price of the plot was fixed at ₹21,90,900/- and complainant as per development linked plan opted by him, has made payment of ₹36,61,933.61 till date. Respondent has annexed copy of customer ledger as Annexure R-2 which depicts that a sum of ₹34,95,553/- has been paid by complainant. Meaning thereby respondent ha mistakenly mentioned the amount as ₹36,61,933.61/-in para 7 of his reply instead of ₹34,95,553/-. It has been submitted that



complainant repeatedly defaulted in making timely payments and was duly informed about non-payments through various reminders from August 2010 to February 2012. On 06.12.2012, complainant was informed that his unit has been cancelled due to persistent default in making installments but later on request of complainant allotment was restored in favor of complainant. Respondent has further stated that due to modifications and approvals of revised layout plan by competent Authority, DTCP, Haryana, the plot initially allotted to complainant was changed from C-166 to D-271 and offer of possession of new plot was given to the complainant on 30.06.2020. Respondent has stated that delay caused in handing over the possession is not intentional and is rather due to reasons beyond the control of respondent company. With regard to status of the project respondent has submitted as follows:

(i) The respondent promoter applied for grant of license to develop a plotted colony on land measuring 118.188 acres in Sector-33 and 33A, Rohtak vide application dated 22.06.2006 and application dated 07.05.2007. Against the said applications license no. 36 of 2010 dated 07.05.2010 was granted which was valid upto 06.05.2014.

(ii) A land acquisition process was initiated by State Government on 13.02.2008 with the issuance under Section 4 of the Land Acquisition Act, 1894 vide which some portion of this licensed colony was also proposed to be acquired for HSIIDC. The land owning company filed

objections under Section 5A and without opportunity of hearing, declaration under Section 6 was issued on 13.12.2008. Land was acquired vide two separate awards dated 13.07.2009 and 17.08.2009. The Government of Haryana has a land release policy date 22.10.2007 and the respondent promoter/land owning companies were expecting release of land under the said policy.

(iii) On 24.01.2011, DTCP, Haryana issued a show cause notice/provided opportunity of hearing before delicensing of land measuring 14.15 acres.

(iv) A Civil Writ Petition No. 6196 of dated 02.04.2012 was also filed in respect of the acquisition by the respondent-promoter which was dismissed in limine for the reasons of delay and laches.

(v) Since, 14.15 acres land could not be released, the same was de-licensed vide Town & Country Planning Department on 31.10.2014 out of total licensed area measuring 118.188 acres.

(vi) Now after de-licensing of 14.15 acres, total project area reduced to 104.038 acres. On 08.01.2015 respondent-promoter submitted revised layout plan of the reduced colony. Since their license was valid upto 06.05.2014, they also applied for its renewal on 07.10.2015, 29.09.2017 and 22.04.2019. On 19.06.2018 their pending application for approval of revised lay out plan and renewal of the license were considered by the department, and on 23.12.2019 a revised layout plan

was approved followed by approval of zoning plan dated 28.02.2020 and demarcation plan dated 17.03.2020. For three months due to outbreak of Covid-19 they could not commence the process of offering possession to the allottees which they did on 30.06.2020 after ease of COVID restrictions.

(vii) It has been averred that 300 conveyance deeds have already been executed and 500 allottees have settled their accounts.

Respondent has further submitted that development works namely: potable water line, sewer line, storm line, drainage, road network, street lights have been developed. Project has a temporary electricity connection. Internal development works were completed by 2012-2013 and basic infrastructure has already been developed at site. Respondent, therefore, claimed that due to force majeure conditions delay has been caused in handing over possession. It has also been contended that complainant is trying to avoid taking over of possession and hence, respondent company is entitled to holding charges. It has also been contended that respondent has not charged any escalated cost of the plot from the complainant and has offered the possession @₹5,450 per sq. yards whereas present market value of same plot is ₹25,000-30,000/- per sq. yard excluding EDC and IDC.

4. Learned counsel for respondent argued that delay in handing over the possession has been caused due to delay in renewal of license by DTCP and non-approval of revised layout plan which was pending with the

Authority since 2014. Learned counsel further argued that offer of possession was made to the complainant on 30.06.2020 and complainant is liable to pay all statutory charges including GST. Furthermore, she argued that allegations of complainant that infrastructure facilities are not available, are not tenable for the reason that internal development works are complete and basic infrastructure has already been developed at site since 2013. She further argued that if the complainant is not happy with offer of possession made to him, he is at liberty to withdraw from the project and take refund of the amount paid by him. She further stated that complainant is not coming forward to take possession of the plot offered to him whereas respondent is ready to settle the matter of delay interest with him.

5. After hearing both parties and going through documents placed on record, Authority observes and orders as under:

(i) The plea of force majeure taken by respondent has already been declined in bunch of cases with lead case no. 1253 of 2020 titled Naresh Kumari versus M/s Parsvnath Developers Ltd. vide its order dated 30.11.2021. Authority reiterates its decision taken in above said case, and declines to agree with the plea of force majeure taken by respondent in respect of delay caused in offering possession. Hence, complainant is entitled to interest on the amount paid by him from deemed date of possession till the date of offer of possession 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% (8.00% + 2.00%).

(ii) Respondent had offered possession of the plot to the complainant on 30.06.2020. 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. However, contention of respondent for not incorporating delay interest is that delay has been caused due to force majeure conditions and he is not liable to pay interest for the delay caused in offering possession. Said argument has already been declined in preceding para and learned counsel for the complainant has agreed that delay interest be given to complainant till 30.06.2020, therefore respondent is directed to pay complainant delay interest till the date of offer of possession made by him i.e. 30.06.2020.

(iii) Plot buyer agreement has not been executed between the parties. Learned counsel for the complainant has stated that present case may be disposed of in terms of complaint case no. 1311 of 2021. As per terms of said order, deemed date of possession for the purpose of



calculating delay interest should be reckoned as two years from the date of final payment made by complainant. Accordingly, following the same principle, deemed date of possession in the present case shall also be reckoned as two years from the date of final payment made by complainant. Final payment was made by complainant on 28.05.2013, therefore deemed date of possession works out to 28.05.2015. Accordingly, delay interest payable to the complainant shall be calculated from this date till the date of offer of possession made to the complainant i.e. 30.06.2020.

(iv) In regard to issue of GST being charged by respondent it is observed that the Government introduced GST in the year 2017. Since the deemed date of possession in this case was prior to coming into force of GST, respondent is not justified in demanding GST charges from the complainant. Said amount is not payable by complainant.

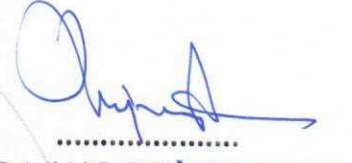
(v) In regard to issue of refund of preferential location charges of ₹1,09,545/-, it is observed that complainant has not proved by way of any documentary evidence as to why such charges are not payable by him. Therefore, Authority does not allow said relief of complainant.

6. Authority has got calculated the interest payable to complainant and accordingly amount of delay interest payable to complainant calculated as per Rule 15 of HRERA Rules, 2017 which as on date works out to 10%

(8.00% +2.00%) from deemed date of possession 28.05.2015 till 30.06.2020 on sum of ₹34,95,553/- works out to ₹17,82,253/-. Respondent is accordingly directed to issue fresh statement of accounts of new plot incorporating therein the delay interest so calculated by this Authority and shall not charge GST from the complainants.

7. 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]