



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 2956 OF 2019

Amit Kumar

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 2957 OF 2019

Gulshan

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 2959 OF 2019

Poonam

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

4. COMPLAINT NO. 2964 OF 2019

Phula Rani

....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: 14th

Present: - Mr. Amit, representative for the complainant through video conference

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

ORDER (RAJAN GUPTA-CHAIRMAN)

Captioned bunch of complaints is being disposed of together because grievances involved therein are similar and are directed against the same respondent by taking complaint no. 2956 of 2019 is taken as lead case. Facts of this complaint are being taken into consideration for disposal of the bunch.

2. Case of the complainant is that he had booked a residential plot admeasuring 215 sq.yards in the project named "Parsvnath City Karnal" bearing plot No.C-525, Block C at the basic sale price of ₹8,60,000/- and paid ₹2,50,000/- vide receipt dated 22.03.2014. A copy of the same is annexed with complaint. Plot buyer agreement was executed between respondent and the complainant on 18.05.2015. In pursuance of Plot Buyers' agreement, complainant has paid 95% of the total consideration amount as per payment plan and remaining was to be paid at the time of offer of possession. A copy of

9

receipts of payments amounting to ₹11,50,780/- are annexed with the complaint.

As per clause 10(a) of Plot- Buyer Agreement, possession was to be delivered within 24 months from the date of agreement i.e by 18.05.2017, but, possession of the plot has not been handed over till date. Complainant has visited the office of respondent several times to enquire about status of the project but in vain. There has been lapse of more than 2 years in handing over the possession of the plot, therefore, complainant has filed present complaint seeking possession of plot booked by him after completion of all development works along with interest for delay caused in handing over the possession and compensation.

3. Respondent filed his reply on 08.01.2020 admitting the facts of booking of plot made by complainant, the agreed sales consideration, the area and location of the plot and payment of ₹10,50,780/- made by complainant. Respondent has however called the complainant a defaulter in making timely payment of instalments despite issuance of various reminders from June 2014- October 2017. Copies of reminder letters are annexed as Annexure R-3(colly). Respondent has stated that respondent along with this 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 in principle vide memo dated 29.08.2014. A copy of approval of revised layout plan and license is annexed as Annexure R-2. Respondent further submitted that as per policies, for finalization of the layout plan, objections were invited from all existing allottees. However, an allottee named Sh. Ram Niwas Gupta had filed a complaint before Directorate of town & Country Planning, Haryana, Chandigarh regarding the allotment of plot made by the respondent before grant of license of the project. It has been further averred that said objections raised by Sh. Ram Niwas Gupta had nothing to do with approval of final layout plan as plot allotted to him was at same place in the unrevised and revised layout plan as there being no change in the location and facilities. Consequently, on 15.02.2017, DTCP had awarded payment of composition fees of Rs 4 Crore to regularize the allotment made in favour of Mr. Ram Niwas Gupta. A review-cum- representation was filed against it on same date in the office of DTCP, Haryana, followed by a representation dated 19/20.11.2019. On 30.12.2019, review-cum-representation dated 15.02.2017 and 20.11.2019 was dismissed against which respondent 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

compliance report of 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 Sh. Ram Niwas Gupta was completely illegal and arbitrary in nature.

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. They 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.

5. These cases were heard at length on 28.01.2021, wherein Authority had observed that project has been granted in principle approval of revised layout plan, therefore he was directed to offer possession of plots to the complainants within 30 days. Order dated 28.01.2021 is reproduced below for reference:



“1. While perusing record, it is revealed that in compliance of order dated 12.11.2020, notices were issued to DTCP, Haryana and DTP, Karnal to furnish their reports with regard to status of application filed by the respondent with regard to approval of revised demarcation and zoning plans and reasons for not granting said approvals till date.

2. A reply from DTP, Karnal has been received on 21.01.2021 whereby it has stated that as per available record of his office, revised layout plan/ demarcation plan is under consideration in the office of Director General, Town and Country Planning, Haryana, Chandigarh.

3. Besides, an email dated 27.01.2021 has been received from DTP(HQ) whereby it has stated that in-principle approval of revised layout plan for an area measuring 81.136 acres stands granted vide Directorate memo dated 29.08.2014 at the time of grant of licence no. 141 of 2014 dated 29.08.2014 for an additional area measuring 30.572 acres for inviting objections from the allottees. But said revised layout plan was pending due to non-deposit of composition fee of ₹4 crore and outstanding EDC, renewal of licence etc. Furthermore, four weeks' time has been sought to file detailed reply in the matter.

4. In view of above, Authority observes that since in principle approval of revised layout plan has been granted to the respondent, he can offer possession to the allottees on the basis of such in principle approval of demarcation plan. Therefore, respondent promoter is directed to offer possession of the plots to the complainants within thirty days. As far as issue of payment of delay interest is concerned, decision will be taken on next date of hearing. Meanwhile complainants are directed to exchange with respondent calculations depicting the amount of delay interest payable to the complainants who may file his own calculations atleast two weeks before next date of hearing.

5. With these directions, cases are adjourned to **18.03.2021.**”

6. Thereafter these cases were heard on 11.11.2021 wherein Authority has observed that any sort of undertaking to be obtained from complainants at the time of delivery of possession would not be accepted as it may jeopardise

complainants' right vested in them in terms of builder buyer agreement already executed between parties. Said order dated 11.11.2021 is reproduced below:

“1. Initiating her pleadings, learned counsel for the respondent stated that possession of the plots has already been offered to the complainants except in complaint case no. 2956 of 2019 wherein possession will be offered within some days. She further prayed for deferment of awarding payment of delay interest as per Rule 15 of HRERA Rules till the outcome of SLPs before Hon'ble Supreme Court.

2. Complainants and representatives of complainants present in captioned complaints alleged that complainants are being forced to execute an affidavit cum undertaking containing unjust and unreasonable conditions by the promoter while delivering possession of the booked property. Therefore, Authority observes that any such undertaking to be obtained from the complainants at the time of delivery of possession will not be accepted by Authority as it may be jeopardizing their rights vested in terms of builder buyer agreement already executed between the parties. Possession shall be given by respondent promoter without insisting any such undertaking within 15 days of uploading of this order.

3. Respondent is directed to send the offer of possession of plot in complaint case no. 2956 of 2019 within a week and Authority will hear the arguments of the parties with regard to amount payable to complainants by respondent and amount payable by them to respondent on next date.

4. Case is adjourned to 14.12.2021.”

7. Further, during the course of hearing on 07.04.2022, complainant had stated that the project is not entirely complete as there are no basic infrastructural facilities laid down at the site. In order to ascertain the availability of basic infrastructural facilities, Authority had appointed Chief Town Planner of Authority as Local Commissioner in complaint no.1362 of 2020 relating to the same project, who was asked to visit the site and further to

submit a report regarding the status of the project. So, present cases were adjourned awaiting report of Local Commissioner in complaint no. 1362 of 2020.

8. In compliance of the order dated 07.04.2022, the site report was placed on record before Authority on 10.08.2022 in complaint no.1362 of 2020. On perusal of site report, it is revealed that services pertaining to water supply, sewer and storm water are laid at the site but electricity poles are yet to be installed.

9. Today, representative of complainants requested for immediate possession of the plots on as and where basis along with delay interest for the period of delay caused in handing over of possession.

10. Learned counsel for respondent, on the other hand reiterated same facts as have been stated in his reply and submitted that offer of possession has already been made to the complainants except in complaint no. 2956 of 2019 but the same was not accepted by them.

11. In view of the above submissions and perusal of the documents, Authority observes that electricity connection is the most essential part of infrastructure in any colony and without supply of electricity the colony is not complete. In light of this fact, offer of possession made to complainants is not a valid offer of possession. Therefore, Authority is of view that the respondent shall issue a fresh offer of possession after ensuring supply of electricity connection in the project. However, complainants are insisting upon the

immediate possession on as and where basis. Therefore, Authority directs the respondent to offer immediate possession of the plots to complainants within 30 days of uploading of this order along with fresh statement of accounts incorporating therein delay interest accrued for delay in handing over the possession.

12. It is pertinent to mention here that amount of EDC/IDC, VAT, services tax and GST is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned departments, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder is, therefore, not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned.

13. Authority has got calculated delay interest payable to complainants 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%) from deemed date of possession till the date of passing the order i.e. 16.08.2022. The details of amounts paid by complainants and delay interest calculated on said amount are shown in the following table:

Q

S.No.	Complaint No.	Amount paid by complainants (minus EDC and IDC)	Deemed date of possession	Upfront delay interest calculated by Authority till 16.08.2022	Further monthly interest
1.	2956 of 2019	₹7,18,037/-	18.05.2017	₹3,77,117/-	₹6,098/-
2.	2957 of 2019	₹25,58,701	26.05.2017	₹13,38,236/-	₹21,731/-
3.	2959 of 2019	₹30,51,507/-	13.06.2017	₹12,93,370/-	₹25,917/-
4.	2964 of 2019	₹13,31,192/-	26.05.2017	₹6,63,848/-	₹11,306/-

In complaint no. 2956 of 2019 the complainant claims to have paid an amount of Rs 11,50,780/- in support of which he has annexed receipts of total claimed amount. Respondent in his reply has admitted an amount of Rs 10,50,780/- towards paid amount by complainant. Since complainant has attached proper receipts of paid amount of Rs 11,50,780/- issued by respondent to him, the total paid amount for calculation of interest is taken as Rs 11,50,780/-.

In complaint no. 2959 of 2019 the complainant claims to have paid an amount of Rs 30,51,507/- in support of which he has annexed receipts of total claimed amount. Respondent in his reply has admitted an amount of Rs 23,00,857/- towards paid amount by complainant. Since complainant has attached proper receipts of paid amount of Rs 30,51,507/- issued by respondent to him, the total paid amount for calculation of interest is taken as Rs 30,51,507/-. Besides this, in receipts of total paid amount of Rs 30,51,507/- no



specific amount has been mentioned towards EDC/IDC and other taxes, so the calculation of interest is made by taking total paid amount of Rs 30,51,507/- without any deduction.

In complaint no. 2964 of 2019 the complainant claims to have paid an amount of Rs 20,27,300/- in support of which he has annexed receipts of total claimed amount. Respondent in his reply has admitted an amount of Rs 19,27,300/- towards paid amount by complainant. Since complainant has attached proper receipts of paid amount of Rs 20,27,300/- issued by respondent to him, the total paid amount for calculation of interest is taken as Rs 20,27,300/-.

If respondent fails to handover the possession within 30 days, then he will be liable to pay further monthly interest to the complainant till actual handing over of possession as mentioned in abovementioned table.

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


.....
RAJAN GUPTA
[CHAIRMAN]


.....
DILBAG SINGH SIHAG
[MEMBER]