



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 420 OF 2021

Bharat Singh

....COMPLAINANT(S)

VERSUS

M/S Parsynath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 05.08.2022

Hearing: 4th

Present: - Ms. Rubai J. Singh, learned counsel for the complainant

None for the respondent

ORDER (RAJAN GUPTA - CHAIRMAN)

The case was heard at length on 31.05.2022 after hearing the facts of complaint, detailed order was passed. Certain issue was raised by the respondent regarding the payments made by the complainant. So, Authority

in order to proceed further with the case, has directed the complainant to submit the valid proof of payments before the court. Said order dated 31.05.2022 is reproduced below:

"1. Complainant's case is that on 20.09.2010 he booked an apartment bearing no.T-104, admeasuring 1780 sq.ft in respondent project namely, 'Parsvnath Royale, Panchkula' by paying an amount of ₹2,50,000/-. Copy of cheque dated 20.09.2010 for sum of ₹2,50,000/- has been annexed as Annexure P-1. On 08.12.2010, he further paid an amount of ₹3,00,000/- to respondent, copy of receipt dated 08.12.2010 annexed as Annexure P-2. He further submitted that respondent had issued various demand letters dated 15.03.2011, 04.04.2011 to the complainant which were prior to signing of the builder buyer agreement, whereby respondent demanded an amount of ₹11,83,491/- along with interest for delayed period i.e. ₹52,073/- and ₹67,637/- respectively from the complainant. On 25.01.2011, respondent sent copy of flat buyer agreement to the complainant which was executed between the parties on 10.05.2011. It has been contended that an amount of ₹3,17,750/- was paid by complainant to the respondent in cash, at the time of signing of agreement. Complainant has stated that he has paid the respondent a total sum of ₹8,67,750/- till date against basic sale price of ₹57,85,000/-. He also refereed to clause 4(a) of the agreement, wherein respondent had acknowledged that a total amount of ₹8,67,750/- was paid by complainant towards basic sale price. As per clause 10(a) of agreement executed between the parties, respondent was under an obligation to handover the possession of the booked apartment within 36 months along with grace period of six months from the date of agreement, which comes out to 10.11.2014, but respondent has miserably failed to complete the project and hand over possession of flat despite lapse of eight years from the deemed date of possession. Complainant had approached respondent on several occasions regarding completion of the project and delivery of possession however no satisfactory response was received from respondent, and they kept making false assurances that possession of flat would be delivered soon. Hence, present complaint has been filed



seeking possession of the flat along with permissible delay interest.

2. Respondent has filed his reply on 19.10.2021 wherein he has only admitted payment of ₹3,00,000/- from the complainant against claimed amount of ₹8,67,750/-. It has been contended that complainant booked an apartment on 08.12.2010 by paying booking amount of ₹3,00,000/-. As per the plan opted by complainant, complainant was under an obligation to pay atleast 35% payment of total basic price upto 29.02.2012. However, complainant has paid only about 5% of total basic cost i.e. ₹3,00,000/- and assured that remaining payments shall be made in few days. Thereafter, on 15.12.2010, complainant made another payment of ₹5,90,095/- vide cheque no. 228210 dated 15.12.2010 which included ₹5,67,750/- towards basic cost and ₹22,345/- towards service tax. On 25.01.2011, respondent sent original copy of flat buyer agreement to complainant with an understanding that complainant shall return the original agreement after signing the same. On 31.01.2011, customer relation department of respondent got an intimation from Finance Department that cheque bearing no. 228210 dated 15.12.2010 was dishonoured but till then copy of flat buyer agreement was already sent to complainant mentioning therein that respondent has received amount of ₹8,67,750/- instead of ₹3,00,000/-. Said letter dated 31.01.2011 has been annexed as Annexure R-2 with the reply. An intimation regarding dishonouring of cheque was sent to the complainant on 02.03.2011 and copy of said letter has been annexed as Annexure R-3. However, at the time of execution of the agreement on 10.05.2011, the amount mentioned therein went unnoticed and respondent sent duly signed copy of flat buyer agreement to the complainant mentioning wrong amount of ₹8,67,750/- instead of ₹3,00,000/-. It has been alleged that complainant failed to make remaining payment, despite service of various reminders from year 2011- 2012. Thereafter, on 12.03.2012, due to persistent default of the complainant, his unit was cancelled and an amount of ₹3,00,000/- was therefore forfeited in terms of clause 2(a) and 5(a) of the agreement executed between the parties. In support of his contention, respondent has annexed cancellation letter dated 12.03.2012 as annexure R-7 of reply and hence, complainant is not an allottee of the project. It has further been contended that offer for fitouts possession in towers T1 - T5 & T8 has already been given to other allottees.



3. Learned counsel for complainant argued that a sum of ₹8,67,750/- has been paid by the complainant. She drew attention of Authority towards Annexure P-1 and P-2 for proving amount of ₹5,50,000/- and stated that remaining amount of ₹3,17,750/- was paid in cash at the time of execution of flat buyer agreement. She stated that respondent knew about the dishonouring of cheque in January 2011 and agreement was executed in May 2011 wherein respondent had admitted payment of ₹8,67,750/- made by the complainant. Therefore, learned counsel argued that the amount mentioned in the agreement should be taken as correct and final.

4. Learned counsel for respondent on the other hand argued that respondent has only received a sum of ₹3,00,000/- from the complainant. Copy of customer ledger annexed as Annexure R-5 with the complainant also depicts the same. She further argued that copy of flat buyer agreement was sent to complainant on 25.01.2011 and fact of dishonouring of cheque came to the knowledge of respondent later on i.e., on 31.01.2011 and respondent while signing said agreement did not notice that amount mentioned therein as having being paid the complainant was wrongly mentioned as ₹8,67,750/- instead of ₹3,00,000/-. She stated that since complainant was defaulter in making timely payments, his unit was cancelled and amount of ₹3,00,000/- deposited by him has been forfeited and he was duly informed about the same vide letter dated 12.03.2012. She further argued that present complaint is not maintainable and is barred by limitation.

5. After hearing both parties and going through the record, Authority observes that before proceeding in the matter, it has to be decided that how much amount has been paid by the complainant. Complainant's case is that a sum of ₹8,67,750/- was paid by him to respondent and the amount mentioned in the flat buyer agreement shall be taken as correct but complainant has not annexed receipts for said payment except for one receipt annexed as Annexure P-2 for a sum of ₹3,00,000/-. Document annexed as Annexure P-1 which is copy of cheque dated 20.09.2010 for sum of ₹2,50,000/- can't be taken a valid proof as it does not signify the name of the company to whom said payment has been made and whether said cheque was deposited in the account of respondent or not. As of now, Authority understands that complainant has only been able to prove that sum of ₹3,00,000/- has been paid to the respondent. Learned

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counsel for complainant sought time to prove payment of remaining amount.

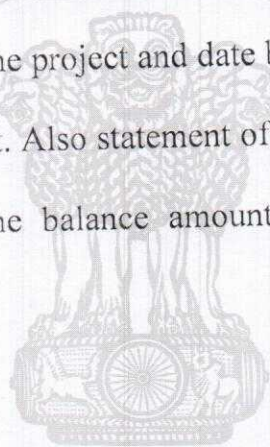
6. On the request of learned counsel, case is adjourned to 03.08.2022."

2. Today, learned counsel for the complainant argued that a sum of ₹2,50,000/- was paid by complainant on 20.09.2010 and copy of receipt for same has been annexed as Annexure P-1. Further, a sum of ₹3,00,000/- was paid to respondent on 08.12.2010 and copy of its receipt is annexed as Annexure P-2. She further argued that complainant had already admitted the fact in his complaint that cheque for an amount of ₹5,90,095/- could not be deposited due to some inadvertent issues, but said amount is not included in the total amount paid by complainant i.e. 8,67,750/-. In support of her arguments, she has placed on record the bank account statement of the complainant whereby on 16.12.2010, the cheque issued in favour of the respondent of ₹5,90,095/- has got returned back to the complainant. The bank account statement of the complainant has been taken on record. She further argued that remaining amount of ₹3,17,750/- was paid to respondent in cash at the time of execution of builder buyer agreement. Learned counsel submitted that THE amount mentioned in the builder buyer agreement should be taken as correct because the agreement was signed by both parties four months after the day on which fact of dishonouring of cheque came to knowledge of respondent.



3. After going through the above submissions of learned counsel for complainant and on basis of evidence available on record, Authority concludes that the sum of ₹8,67,750/- was paid by complainant. As per the Flat buyer Agreement executed between the parties and signed by both parties, an amount of ₹8,67,750/- stands paid to the respondent and in absence of any cogent evidence to contrary, the amount mentioned in agreement is being taken as correct and final as having been paid to respondent.

4. Adjourned to 27.10.2022 with direction to respondent to submit the details of the status of the project and date by which possession would be handed over to complainant. Also statement of accounts should be submitted by respondent showing the balance amount payable by complainant to respondent.



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RAJAN GUPTA
[CHAIRMAN]

DILBAG SINGH SIHAG
[MEMBER]