



HARYANA REAL ESTATE REGULATORY AUTHORITY, PANCHKULA.

Mini Secretariat (2nd and 3rd Floor), Sector-1, Panchkula.

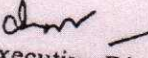
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The Authority after consideration decided to modify its orders dated 17.10.2018 passed in Complaint No. 265 of 2018 - titled as Ruchika Bathla Vs Vatika Ltd., to the extent that the name of the Counsel of the Complainant in the said order be read as 'Himanshu Raj' in place of 'Shobhit Phutela'.

True copy


Executive Director,
HRERA, Panchkula



**HARYANA REAL ESTATE REGULATORY AUTHORITY,
PANCHKULA.**

Complaint. No. RERA-PKL-265/2018
Date: 17.10.2018

Ruchika Bathla & another.

...Complainants.

Versus

M/s Vatika Limited.

...Respondent.

Coram:-

Shri Rajan Gupta, Chairman.
Shri Anil Kumar Panwar, Member.
Shri Dilbag Singh Sihag, Member.

Appearance:-

Shri Shobit Phutela, Advocate for complainant.
Shri Kamal Dahiya, Advocate for respondent.

ORDER:-

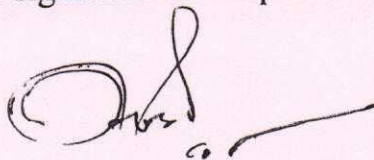
1. This case on the request of the parties was adjourned on the previous date as they wanted to negotiate for an amicable settlement.
2. Today, the Authority has been apprized that the respondent will offer possession to the complainant, along with interest for the period of delay which had been there on the part of the respondent in handing over the possession. The complainant's counsel is also ready to accept possession with the condition that interest is paid to him on the amount already deposited with the respondent. However, he submits that the interest shall be calculated from July, 2011 when the parties had entered into a buyer's agreement.



3. Learned counsel for the respondent submits that he is ready to pay interest from the date of agreement but such agreement was executed on 18.09.2013 and not in July, 2011. According to him, a copy of the buyer's agreement actually entered between the parties is attached as Annexure R-3 with the reply and Annexure C-4 on which the complainant is relying for showing the agreement as entered in July, 2011, is not genuine document. So, the basic controversy which now survives for adjudication by this Authority is as to whether buyer's agreement Annexure C-4 or the buyer's agreement Annexure R-3 is more credible.

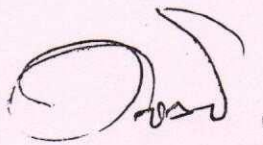
4. The Authority after hearing the parties on 17.10.2018 has reserved its order because the complainant's counsel wanted to file written submissions in the matter.

5. After going through the written submissions which have since been filed on 23.10.2018 and on appraisal of the oral arguments of the parties, the Authority observes that strict standard of proof is not necessary in the proceedings under RERA Act as it is summary in nature to prevent vagrancy and pave way for speedy disposal of cases. The Authority has to therefore evaluate the case of the respective parties on pre-pondence of probability emerging from the material placed before it. Out of the two agreements produced in the present case by the respective parties, the agreement Annexure C-4 does not bear the signature of authorized signatory of respondent-promoter at the place where his/her signatures are required to be put on the agreement.


A handwritten signature in black ink, appearing to be 'D. S.', with a long horizontal line extending to the right.

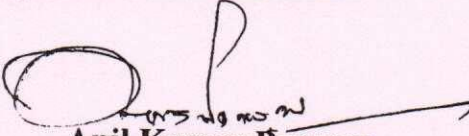
The agreement Annexure R-3 relied upon by the respondent on the other hand bears not only the signatures of authorized agent of promoter but even the signatures of both complainants.

6. Learned counsel for the respondent at the time of hearing has placed on record certified specimen signatures of complainants Ruchika Bathla and Naina Gaba, which are being maintained by the concerned bankers in their Bank Account No. 3200101000150 of Canara Bank and Account No. 07251000002281 of Punjab and Sind Bank respectively. These signatures are duly verified by the concerned Managers of these banks. Pertinent to mention here is that said signatures of complainants are similar to their signatures appearing on buyer's agreement Annexure R-4. Even the learned counsel for the complainants has not been able to dispute during arguments that agreement relied upon by the respondent had been signed by the complainants. So, a definite query was put to the complainants' counsel as to why the complainants having already entered into buyer's agreement in July, 2011 had executed another buyer's agreement in April, 2013. He could not furnish any satisfactory reply for explaining the necessity on the part of the complainants to sign the buyer's agreement of April, 2013. So, it will be prudent and safe to act upon the buyer's agreement of April, 2013 Annexure C-4 in preference to the buyer's agreement of July, 2011 Annexure R-3 for the purpose of reckoning the starting point of awarding interest to the complainants.



7. In view of above discussions, the complaint is disposed of with the directions that the respondent shall deliver the possession to the complainants as and when the occupation certificate is granted by the concerned department, and also pay to the complainants interest on the already paid amount at the rate envisaged under Rule 15 of the HRERA, Rules i.e. @ State Bank of India highest marginal cost landing rate plus 2% from the date of execution of buyer's agreement of April, 2013 till the actual handing over the possession. The amount of interest so payable shall be adjusted against the amounts payable by complainants to the respondent at the time of delivery of possession and in case the amount of interest so payable exceeds the amount which the complainants would be liable to pay to the respondent, then the excess amount of interest shall be paid to the complainants through bank draft at the time of delivery of possession. Non- payment of such amount by the respondent to the complainants will entail the liability against the respondent for initiation the proceedings under Section 63 of the RERA Act, 2016 and also a further liability on the part of the respondent to pay penal interest of 24% per annum for such period by which the payment of the amount so payable to the complainants is delayed. File be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member

Rajan Gupta
Chairman

I agree with the conclusions arrived at by my learned friends. However, I do not agree with the decision relating to award of compensation for delay in offering possession of the plot.

2. Admittedly, the plot buyer-agreement, which this Authority has found to be correct, was executed on 18.09.2013. As per the provisions of the agreement, as also admitted by both the parties, the possession was to be handed over within three years of the date of agreement, which comes to 18.09.2016. Clause 12 and 13 of the agreement provides for payment of compensation to the allottees in case of delay in offering possession of the plot by the developer. It provides for payment of 9% interest for the period of delay. Since delay in offering possession works out to about two years, the complainants shall be entitled to compensation on the amount deposited by him with the respondent at the rate of 9% for the period of delay from the deemed date of offering possession. Further, if the complainants have delayed in payment of the due money to the respondents, the respondents shall be entitled to charge interest from the complainants at the same rate i.e. 9%, which this Authority has found to be a reasonable interest in such matters.

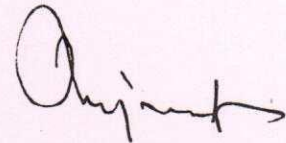
3. As ordered by my learned friends, provision of Rule 15 HRERA Rules does not apply in such situations the detailed reasons for which have been cited by me in the Complaint No.49 of 2018- Parkash Chand Arohi Versus M/s Pivotal Infrastructures Pvt. Ltd. The reasons cited

4

therein judgment will be fully applicable in this case also. Accordingly, I order that the provision of Rule 15 does not apply in the circumstances of this case.

4. The respondents shall settle the accounts with the complainants at the time of offering possession of the plot in accordance with the principles laid down above.

I order accordingly.



(Rajan Gupta)
Chairman