



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE ADJUDICATING OFFICER

Complaint no. 920 of 2018

Date of institution: 07.12.2018

Date of Decision: 27.01.2022

Smt. Kusum Lata w/o Sh. Pawan Kumar Rana, age around 43 years, resident of House No.150, HUDA Sector 2, Rohtak, Haryana 124001.

....COMPLAINANT

VERSUS

1. M/S Parsvnath Developers Ltd. through its Chairman, registered office at Parsvnath Developers Ltd., Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi – 110032
2. Mr. Pradeep Jain, member Board of Directors/promoter of the company, registered office at Parsvnath Developer Ltd., Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi – 110032
3. Mr. Sanjeev Jain, member Board of Directors/promoter of the company, registered office at Parsvnath Developers Ltd., Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi – 110032
4. Mr. Rajeev Jain, member Board of Directors/promoter of the company, registered office at Parsvnath Developers Ltd., Parsvnath Tower, Near Shahdara Metro Station, Shahdara, Delhi – 110032

....RESPONDENTS

Santa Gupta

Hearing: 36th

Present: - Mr. Sushil Malhotra, counsel for the complainant through video conference
Ms. Rupali S. Verma, counsel for the respondent through video conference

JUDGEMENT:

The brief facts culminating into the institution of the present complaint are:

1. The complainant Smt. Kusum Lata is in service Government employee. The complainant had purchased one residential plot bearing no.B-039 having area of 402 sq. yards (admeasuring 336.12 sq. mtrs) in Parsvnath City Township, Rohtak, the project launched by respondents no.1 to 4 in the year 2009. The complainant is not the original allottee but a third purchaser and has paid premium of ₹12,86,400/-. Development link plan was given to the complainant. Till the filing of complaint all the demands raised by respondents no.1 to 4 have been paid by the complainant and no dues are pending on behalf of complainant after taking loan from LIC Finance. The complainant has paid the complete basic price, EDC and IDC to the developers which are respondents no.1 to 4. The loan taken by the complainant has been repaid along with interest. Possession of the plot has not been delivered to the complainant by respondents no.1 to 4. On 21.03.2012, plot buyer agreement was executed between the complainant and respondents no.1 to 4. As per agreement, the

whole of the amount was paid by the complainant within the timelines prescribed by respondents no.1 to 4. As per clause 8(a) of plot buyer agreement, completion of internal development of township and possession was supposed to be given in March 2014, i.e. within 24 months from the date of signing of agreement, whereas the project is nowhere near completion. The complainant is not having any other source of income except her salary. Every time assurance is been given to the complainant/her representative that work would be completed in the next 2-3 months. Though the plot buyer agreement was executed in March 2012, yet respondents no.1 to 4 had started collecting the payment since the year 2009. Clause 5(b) of plot buyer agreement say that for any default in payment on behalf of the allottee, respondents no.1 to 4 would charge interest @ 24% per annum on account of delay payment. As principle of equality and natural justice, the complainant also deserves the same rate of interest on her payment from respondents no.1 to 4. As per clause 12(a) of the said agreement delay in payment on maintenance work applicable to buyer would invite rate of interest at 24% per annum. By way of the present complaint, the complainant has sought compensation of ₹39,58,621/- for loss of opportunity, compensation of ₹20,00,000/- on account of mental tension, agony, harassment for around nine years along with considerable amount of financial loss due to increase in the rates of building material, cost of construction, cost of property, rental accommodation charges. The complainant has also claimed interest @ 24% per annum on ₹ 39,58,621/- w.e.f. 22.09.2009, when the

respondents had started taking payment from the complainant. Cost of litigation to the extent of ₹60,000/- has also been claimed.

2. Upon notice, respondent had appeared through counsel and filed reply taking preliminary objections that respondents no.2 to 4 are not necessary parties as they have been impleaded in their official capacity only. The complaint is not maintainable as the project is at the verge of completion and the possession of plot will be offered soon subject to receipt of approval of revised lay out plan, demarcation cum zoning plan and license. The relief sought by the complainant is not tenable and is liable to be rejected with exemplary costs. The respondent company along-with associate companies had acquired the land admeasuring 118.188 acres in village Bohar, District Rohtak and obtained the license on 07.05.2010 from Director Town and Country Planning, Haryana, Chandigarh which was valid up to 06.05.2014. Subsequently DTCP had de-licensed an area measuring 14.15 acres on 07.11.2014 on account of said land being acquired by HSIIDC. The respondent company had applied for renewal of said license for area admeasuring 104.038 acres on 07.10.2015 and submitted its revised lay out plan. Respondent company also applied for renewal of license for further period. Respondent company has applied for registration of project under RERA. Ms. Geetanjali was the original applicant, who had applied for booking for advance registration of plot admeasuring 350 sq. yards in new project and had deposited a sum of ₹2,62,000/- at the time of booking of plot on 22.10.2009. Afterwards, the

original applicant was allotted plot bearing no.B-039 having area admeasuring 402 sq. yards against the basic cost of ₹20,04,975/- in the project Parsvnath City, Rohtak vide its letter dated 08.06.2010 after deducting the discount amount of ₹1,05,525/- i.e. 5% of basic cost of allotted plot. Later on Ms. Geetanjali, the original allottee had transferred all her rights and interest in the said plot in favour of subsequent allottee, Col. Madan Badhwar vide agreement to sell dated 28.04.2011. Accordingly, the respondent company endorsed the name of subsequent buyer in its record. Plot Buyer Agreement was executed with him on 25.07.2012. Col. Madan Badhwar, the subsequent allottee transferred all his rights and interest in the said plot in favour of the complainant Smt. Kusum Lata vide agreement to sell dated 11.08.2012. The respondent company further endorsed the name of the complainant in its record with all relevant formalities and documents. The complainant had approached LIC Housing Finance Limited for the loan against said plot but it is not apparent on the record as to whether the said loan was ever disbursed. Since the financial institution is having lien over the property, the complaint is bad for non-joinder of the parties. There is no intentional delay on the part of the respondent. The respondent no.1 has already developed the basic infrastructure and the development work at the project site is completed since 2014. Since the land had been acquired by HSIIDC, the entire layout plan of the project was changed. The company was forced to file its revised layout plan which was filed with the Authority and was pending at the date of filing of reply to the

complaint. The interest of the complainant is duly protected as it was agreed that respondent no.1 shall pay compensation @ ₹12 per sq. mtr (₹10 per sq. yd.) of the plot area per month for the purpose of delay as compensation to the buyer. Time is not the essence of the contract. The entire complaint has been drafted on incorrect interpretation of clauses of plot buyer agreement. No cause of action has been risen in favour of the complainant. False and baseless allegations have been levelled with intention to retract from agreed terms and conditions. The complaint filed by the complainant is misconceived and erroneous and untenable in the eyes of law. The reliefs claimed by the complainant do not fall within the realm of jurisdiction of this Court. The delay and modifications have been caused due to delay on part of appropriate Government Authorities in granting the requisite approvals which is beyond the control of respondent.

3. On merits, all the averments made by the complainant by way of preliminary objections have been reiterated along with submission that the complainant is not original allottee, she had purchased the said plot from open/secondary market. She was well aware about the status of the project. Dismissal of the complaint has been prayed.

4. No rejoinder has been filed by the complainant to the written statement filed by the respondent.

5. Arguments advanced by learned counsel for the complainant as well as learned counsel for respondent have been carefully heard along with meticulous examination of the records of the case.
6. On perusal of the records, it is evident that the complainant has herself claimed that she was not original allottee and she has purchased the plot from Col. Madan Bhadwar, who had in turn purchased the same from Ms. Geetanjali, who was the original allottee. Copy of plot buyer agreement in favour of Col. Madan Bhadwar has been placed on record as Annexure C-12. The basic price of the plot has been mentioned as ₹20,04,975/- @ ₹4,987/- per sq. yards and the measurement of the plot has been shown as 402 sq. yards. It has been mentioned that the buyer has paid a sum of ₹18,04,478.25/-. Later on the said plot was purchased by the present complainant Smt. Kusum Lata on 11.08.2012. Copy of plot buyer agreement dated 25.07.2012 between respondent and Col. Madan Bhadwar has been placed on record as Annexure C-12 showing that the respondent has made endorsement in the names of Smt. Kusum Lata, the present complainant and her husband Sh. Pawan Kumar Rana on 11.08.2012. Endorsement in the names of Smt. Kusum Lata, the present complainant and her husband Sh. Pawan Kumar Rana has also been made in the receipts, copies of which have been placed on record as Annexures C3-C10. In the complaint, the complainant has nowhere mentioned as to what amount has been paid by her or the previous buyer to the respondent. It has only been mentioned that the complainant has paid a premium of ₹12,86,400/-. Annexure

C-15 is the copy of ledger placed on record by complainant. It shows that a sum of ₹30,54,045/- has been paid to the respondent against allotment of plot no.B-039.

7. It has been argued by learned counsel for the complainant that there is steep rise in the price of the plot. The rate of every building material has been increased considerably. Learned counsel for the complainant has placed on record the copies of brochure as Exhibit CW-1/11, CW-1/12 & CW-1/13 vide which HUDA has invited applications for allotment of free hold residential plots in Sector 56-A, Sector-77 & 78 Faridabad and Sector-10, Bahadurgarh, for which the rate has been mentioned as ₹17,000/-, ₹23,700/- and ₹16,000/- per sq. mtr respectively for 10 marlas plot. It has been argued that the rates of the plot in question have also increased from ₹5965.05/- per sq. mtr to ₹26,000/- per sq. mtr. There is difference of approximately ₹20,000/- per sq. mtr.

8. On the other hand, it is the argument of learned counsel for respondent that though the prices of the plot have raised considerably, yet at the time of offering possession, cost of escalation has not been demanded from the complainant. Hence the complainant is not entitled to any compensation for escalation in cost.

9. Perusal of the file shows that the complainant has not placed on record the letter for offer of possession vide which it could be proved that at the time of offer of possession whether cost of escalation was demanded by the respondent. During the course of arguments, it was argued on behalf of

complainant that offer of possession was made to her on 30.06.2020. Possession of the plot has been taken by the complainant, but no document relating to taking of possession has been placed on the record. In the absence of any such proof that cost of escalation was demanded by the respondent, the complainant cannot be said to be entitled to compensation on account of cost of escalation.

10. The next ground of compensation taken by the complainant is that till the time the possession of the plot was not handed over to the complainant, the complainant had no option but to reside in rented house. Learned counsel for the complainant has placed on record copy of rent deed dated 22.09.2017 as Exhibit CW-1/14. It is relating to House no.1248, Sector-1, Rohtak and the rate of rent has been shown as ₹10,500/- per month and the rent agreement is for a period of 11 months starting from 01.07.2017. It is pertinent to mention here that the said rent agreement is between Sh. Bharat Bhushan as owner/landlord and the second party shown as Ajeet Kumar working as professor at MDU, Rohtak. It is not understandable as to how this rent agreement is relating to the complainant Smt. Kusum Lata. Copy of said rent agreement has been placed on the record for the sake of placing some rent deed on the record, which has no relevancy with the complainant or facts of the present case. Hence no ground is made out to allow compensation to the complainant on the ground that she had to stay in rented house during the period possession of the plot was not handed over to her.

11. It has been argued by learned counsel for the complainant that in the year 2009, the cost of construction over 239 sq. yards apartment was of ₹28,00,000/- to ₹32,00,000/- whereas today of the same standard flat, cost of half area with much less specification is around ₹60,00,000/-, showing that the increase in the cost of construction is around 400%. Copy of brochure of Parsvnath Rohtak has placed on record as Exhibit CW-1/8, the document is not (legible), copy of brochure of Tata Valve Home as Exhibit CW-1/9 and of HL City as CW-1/10. The counsel for the complainant has tried to show that the cost of construction since the year 2009 has increased upto 400%. Though it is the argument of learned counsel for the complainant that cost of construction has increased upto 400%, yet it is worthwhile to mention her that the cost of construction is a relative and subjective term. It cannot be apparent as to what amount the complainant wanted to spend as cost of construction. It varies from one person to other person. It cannot be quantifiable. Hence in the absence of rise in cost of construction being quantifiable, it cannot be allowed and hence no compensation is being granted under this head.

12. It has next been argued by learned counsel for the complainant that there is deficiency in service rendered by the respondent. In Complaint no.1265 of 2020 titled as Kusum Lata v/s Parsvnath Developers Ltd., the respondent had taken the plea of force majeure when the offer of possession was delayed. It was declined by Hon'ble Authority vide order dated 30.11.2021. It has been argued

that respondent cannot take the plea of force majeure when the possession of the plot was not delivered.

13. Though learned counsel for the complainant has not placed on record copy of judgment in 1265 of 2020 titled as Kusum Lata v/s Parsvnath Developers Ltd., yet it has been downloaded from the website of the Authority by the Court. It has rightly been argued by learned counsel for the complainant that in Complaint no.1265 of 2020, Hon'ble Authority has not accepted the plea of force majeure raised by respondent in order dated 30.11.2021.

14. Learned counsel for complainant has placed on record copies of newspapers cuttings as Exhibit CW-1/28 to CW-1/39 showing that some criminal cases were registered against Parsvnath Developers or some instructions were issued at different times by different Authorities to Parsvnath Developers. It is no doubt that copies of some newspaper cutting showing directions given to Parsvnath Builders, the present respondent or the Directors/developers can be sent to custody for non-compliance, yet it has no relevancy in awarding compensation.

15. On the ground of mental harassment and agony caused to the complainant for delayed delivery of possession of the plot, it has been argued by learned counsel for the complainant that the complainant had paid the entire amount to purchase the plot. Endorsement in her name was made on 11.08.2012. As per plot buyer agreement between the respondent and Col. Madan Bhadwar, allottee, from whom the complainant had purchased the plot,

shows that deemed date of possession was 21.03.2014. Though copy of depicting offer of possession has not been placed on the record, yet it is the oral argument of learned counsel for the complainant that possession was taken by the complainant on 30.06.2020. Customer ledger Annexure C-15 shows that total amount of ₹30,54,045/- has been paid to the respondent against allotment of plot no.B-039. It includes basic cost of ₹18,04,478.25/-, preferential location charges of ₹1,00,248.75/-, external development charges of ₹10,29,924/-, internal development charges of ₹95,274/- and administrative charges of ₹24,120/-. Since possession has been taken by the complainant, EDC and IDC charges to the tune of ₹10,29,924/- + ₹95,274/- are liable to be paid to State Government. However preferential location charges to the tune of ₹1,00,248.75/- and administrative charges to the extent of ₹24,120/- were paid by the complainant or his predecessor in interest to the respondent along with basic cost of ₹18,04,478.25/-, which comes to ₹19,28,847/-. It can be said that amount of ₹19,28,847/- was utilized by the respondent to his unfair advantage w.e.f. 21.03.2014 i.e. deemed date of possession till 30.06.2020 i.e. date of offer of possession. Since the possession of the plot was delivered after delay of more than 6 years, the complainant has suffered harassment and mental agony. She had taken loan from LIC housing finance, the loan along with interest has been repaid by the complainant. It had also added to her mental harassment. It is quantified. It would be appropriate if compensation on the ground of mental harassment and agony is calculated @ 6% per annum on the amount deposited

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by the complainant or her predecessor in interest with the respondent. It amounts of wrongful gain to the respondent and wrongful loss to the complainant. The calculation would be as under:

Sr. No.	Amount	Time period	Rate of interest	Compensation Amount (in ₹)
1.	₹19,28,847/-	21.03.2014 to 30.06.2020	6%	₹7,27,360/-

16. The complainant has also sought compensation on account of loss of opportunity. It is relevant to mention here that it is the case of delayed possession. It is not the case when the possession has not been delivered. The complainant has already been paid interest for delay in possession by Hon'ble Authority. In the preceding para the complainant has been awarded compensation for harassment and mental agony. No separate ground for loss of opportunity is made out.

17. Learned counsel for the complainant has also sought ₹60,000/- as cost of litigation. She has attached receipt in the sum of ₹60,000/- charged by the counsel. However the sum of ₹25,000/- is allowed as cost of litigation.

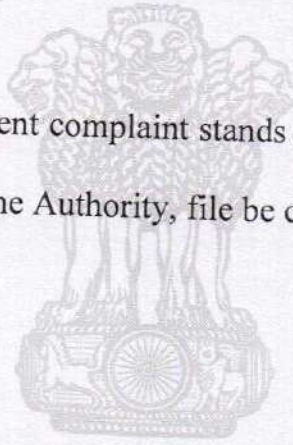
18. It is worthwhile to mention here that plot no.B-039 situated at Parsvnath City, Rohtak is jointly owned by the present complainant Smt. Kusum Lata and her husband Sh. Pawan Kumar Rana. The complaint had only been filed by Smt. Kusum Lata. Sh. Pawan Kumar Rana, the joint allottee has given an affidavit that he was authorizing his wife Smt. Kusum Lata to file

complaint. It is relevant to mention here that no separate claim for compensation would be entertained if Sh. Pawan Kumar Rana chooses to file separate claim for compensation.

19. Sequel to foregoing observations, the present complaint is partly allowed. Respondent is directed to pay an amount of ₹7,52,360/- [₹7,27,360/- + ₹25,000/- (litigation cost)](rupees seven lakh fifty two thousand three hundred sixty only). The amount shall be paid in two installments, meaning thereby first instalment of 50% of amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second installment within next 45 days.

20. In these terms, the present complaint stands **disposed of**. After uploading the judgement on website of the Authority, file be consigned to record room.

27.01.2022



Sarita Gupta

(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 14 pages and all the pages have been checked and signed by me.

Sarita Gupta

(DR. SARITA GUPTA)
ADJUDICATING OFFICER