



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1160 OF 2020

Sanjeev Kumar Goyal and Ritu Goyal

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 27.04.2022

Hearing: 5th

Present: -

Mr. Adarsh Rai, proxy counsel for the complainant through video conference

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

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Facts of complaint are that apartment no. B-191-S, admeasuring 1220 sq.ft. was booked by complainants in the year 2009 in a project named 'Parsvnath Elite floors, Parsvnath City, Dharuhera, Rewari' being developed

by respondent. A Builder Buyer agreement was executed between the parties on 06.11.2009. A copy of original BBA has been annexed as Annexure -2 with the complaint.

Basic sale price of apartment was ₹16,56,760/-. In accordance with the payment plan, complainants by the year 2010 had paid a total amount of ₹5,41,941/-. Complainants have annexed copies of payment receipts at pages 18-20 of their complaint book.

2. As per clause 9(a) of BBA, construction of apartment was to be completed within 24 months with grace period of six months from the date of commencement of construction on the plot on which flat is located. Vide letter dated 06.01.2010 respondent informed the complainants that their installment of ₹2,10,476/- under construction linked payment plan had become due on commencement of construction on 21.01.2010 and same was duly paid by complainants. Thereafter, complainants sent several letters to respondent from 2013 to 2020 inquiring about the status of the project and requesting for compensation for delay in handing over the project but respondent failed to give response to any of the letters. Complainants allege that no offer of possession has been made by respondent despite lapse of more than 10 years since the commencement of construction of project. Therefore, present complaint has been filed seeking possession of the flat with interest or in alternative refund of the amount deposited with respondent along with interest @24% and compensation.

3. Respondent in its reply has admitted the fact of booking of the apartment, the agreed sales consideration, the area and location of the apartment as well as the payment of ₹5,41,941/- made by the complainants. The respondent, however, has called the complainants defaulter in payment of overdue installments. The respondent further states that the project is being developed in terms of statutory approvals granted by competent authorities and that license(s) no. 129-132 and 134-138 of 2007 were granted by competent authority on 03.03.2007. Respondent has applied for renewal of said licenses which are pending with competent authority due to which delay is being caused in commencing the construction at site. Respondent has referred to clause 9(c) of the flat buyer agreement wherein it has been stipulated that in the event of delay caused on account of force majeure conditions, complainants shall be paid compensation @ ₹5/- per sq.ft. Further, it has been contended that time is not essence of the contract and respondent is trying to complete the project for which purpose they have applied for registration with RERA. Respondent has contended that there is no intentional delay on his part rather project has been delayed for the reasons beyond his control. Respondent is however willing to offer an alternate property to the complainants subject to mutual negotiations. In brief the respondent has raised certain technical objections but has admitted all the facts alleged by complainants.



4. Learned counsel for the respondent stated that project was being developed in terms of statutory approvals granted by competent authority but due to certain reasons beyond control of respondent company, project got delayed. She further argued that respondent is trying to complete the project and if refund is allowed at this stage, it would hamper the progress of the project.

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

(i) That the license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. Booking of the apartments have been done from the year 2008 onwards. This project of the respondent is in a serious difficulty. They have applied for registration of project with RERA being an ongoing project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken place for the last over six years. In its project jurisdiction, this Authority has passed following order on 22.03.2021:

“1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project



was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.

2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent company may obtain a copy of the report from the registry of the Authority if they so desire.

3. Opening the arguments Shri Shekhar Verma, Advocate, learned counsel for the promoter-developers reiterated that upon filing of an application for registration the Authority is duty bound to register the project. In support of his contentions he drew the attention of the Authority towards provisions of Section 5 of the RERA Act, 2016 and stated that as per law, the Authority is duty bound to either register the project within a period of 30 days or reject the application for reasons to be recorded after giving an opportunity to be heard to the promoter. Further, if the Authority fails to grant registration or to reject the application within a period of 30 days, the project shall be deemed to have been registered.

4. The Authority does not agree with the contentions of the learned counsel Shri Shekhar Verma for the reasons that the Authority is not duty bound to register the project of a promoter who is defaulter on multiple counts and whose license has not been renewed by the Town & Country Planning Department. Further, if the promoter has failed to complete the project for more than a decade and no construction work is taking place for past 7-8 years, and more importantly there is no hope for scope for its recommencement in near future, the Authority cannot register such a project. Registration of a project implies that the Authority has satisfied itself about credentials of a promoter and it is



satisfied that the project will be completed within the stipulated time frame. Registration of a project by the Authority is an assurance to all future allottees and investors that the Authority will ensure that their money is safe and the project will be completed in time. In this case the promoters have yet to pay 127 crores EDC to the State Government which they are failing to pay last many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arrange by the promoters for recommencing the construction activities.

Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these reasons, it cannot and should not register the project at this stage.

6. The Authority after consideration is of the view of the facts of the matter that application filed by the promoters is liable to be rejected. In the event of the application being rejected, alternate options of handing over of the project to the association of allottees can be explored. However, before resorting to this option one last opportunity is granted to the promoters to arrange funds for recommencing of the project construction and also submit monthly plan for its execution. If by the next date adequate funds for commencing construction work are not put in the escrow account and a plan of action for completion of the project is not submitted, the Authority will be constrained to issue a show cause notice for rejection of the application.

7. Adjourned to 03.05.2021.”



(ii) Authority has offered numerous opportunities to the respondents to commence development works of the project. Repeated directions have been given to them to deposit some money in the Escrow Account but respondents have failed to comply with any of the orders. Respondents have been making repeated assurances but have been failing to keep them.

(iii) Further fact of the matter is that due date of offering possession was 2012. Already delay of more than 10 years has taken place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if respondent had commenced its development or an application for grant of occupation certificate was filed. On the contrary, in this case development is not taking place at all, nor is there any plan of action for commencing it. On account of multiple defaults on the part of respondent, Authority has not even registered the project. In fact, a thought process is going on to hand over the project to association of allottees, which in other words mean that Authority considers that respondents will not be able to complete the project at their level.

6. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the



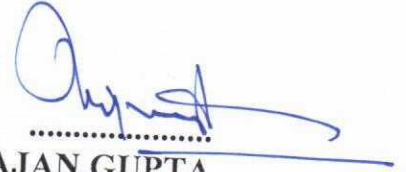
project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of the complainants. Hence, Authority directs respondent to refund the complainants paid amount of ₹5,41,941/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation 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 9.40% (7.40% + 2.00%) from the date amounts were paid till today. Accordingly, total amount along with interest calculated at the rate of 9.40% works out to ₹11,77,120/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 27.04.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹1,65,676/-	05.09.2009	₹1,97,037/-	₹3,62,713/-
2.	₹1,65,789/-	20.10.2009	₹1,95,250/-	₹3,61,039/-
3.	₹2,10,476/-	20.01.2010	₹2,42,892/-	₹4,53,368/-
Total	₹5,41,941/-		₹6,35,179/-	₹11,77,120/-

Respondent is directed to make the entire payment of ₹11,77,120/- within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.



7. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

