



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE ADJUDICATING OFFICER

Complaint no. 941 of 2021

Date of Institution: 09.09.2021

Date of Decision: 30.03.2022

V.P. Batra s/o Sh. Vasdev Batra, r/o Pankaj Arcade, Plot No.5, Pocket No.4, 2nd floor, Sector 11, Dwarka, New Delhi - 110078

....COMPLAINANT

VERSUS

M/s Parsvnath Developers Ltd., Parsvnath Tower, near Shahdara Metro Station, Shahdara, Delhi-110032

....RESPONDENT

Hearing: 12th

Present: - Mr. Shubnit Hans Advocate, counsel for the complainant through video conference

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

Sacita Gupta

JUDGEMENT:

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

1. The complainant had booked commercial unit in Parsvnath City Centre, Sonapat, project of the respondent in the year 2007. He had paid an amount of ₹10,25,500/- out of total sale consideration of ₹41,02,500/- till 2008. Builder buyer agreement was to be executed within 30 days of the booking but the same has not been executed till date. The possession of the unit has also not been offered till date by the respondent to the complainant. The complainant had preferred a complaint bearing no.2215 of 2019 titled as V.P. Batra v/s M/s Parsvnath Developers Ltd. seeking relief of possession of commercial unit along with interest as per provisions of RERA Act, 2016. Vide order dated 17.12.2019 Hon'ble Authority had allowed the complaint directing the respondent to execute builder buyer agreement within a week. With regard to the interest payable to complainant, the Authority had observed that interest on the deposited amount will be payable to the complainant till the date of offer of possession after obtaining occupation certificate. It was also observed that since the complainant wanted possession of the unit, he will be entitled to seek adjustment of interest amount at the time of final settlement of accounts as and when possession is offered to him. Since order dated 17.12.2019 passed by Hon'ble Authority was not complied with, the complainant had filed execution

Complaint no. 780 of 2020. After appearing before Hon'ble Authority, representative of the respondent had stated that respondent will not be able to execute builder buyer agreement as the building plans of the project namely Parsvnath City Centre in which the complainant had booked a commercial unit, had been revised and are yet to be approved by Competent Authority. Vide order dated 03.12.2020 it was observed by Hon'ble Authority that respondent had deliberately failed to discharge the responsibility with a motive of bad business practice and has been utilising the amount paid by complainant for the last 14 years. On 17.12.2019 Hon'ble Authority in Complaint no. 2215 of 2019 had observed that learned counsel for respondent company had made a statement that respondent was ready to execute builder buyer agreement and therefore Complaint no. 2215 of 2019 was disposed of giving directions to respondent to execute builder buyer agreement within a week and interest payable to the complainant was directed to be adjusted at the time of settlement of accounts as and when possession is offered. Unfortunately, respondent company had neither paid the interest @ 9% per annum on the amount deposited by the complainant nor had executed builder buyer agreement despite committing the same and giving statement in the Court. Instead of intimating the complainant, respondent expressed its inability to execute builder buyer agreement in execution petition filed by the complainant. In fact the respondent promoter had mislead the Authority and tried hard not to co-operate with the complainant as well as Authority. The respondent company even failed to

execute the builder buyer agreement which is required to ascertain deemed date of possession for the purpose of calculating interest in case there is delay in handing possession of booked property. In execution Complaint no. 780 of 2020, Hon'ble Authority passed order on 03.12.2020 that the Authority has fixed interest to be paid to the complainant @ 9% per annum from the date of deposit of amount, therefore execution of builder buyer agreement at this stage will not serve the purpose. Respondent was directed to execute builder buyer agreement as soon as he gets all the necessary approvals. Meanwhile delay interest was calculated at ₹12,29,855/- @ 9% per annum from the date of deposit till 31.12.2020. Respondent was directed to pay the said amount and the complainant shall also be entitled to further interest till offer of possession is made to him. Respondent failed to comply with the said order also. Another execution petition bearing no. 940 of 2021 was filed. The respondent has failed to comply all the orders of Hon'ble Authority which has caused immense mental agony, harassment, torture and financial loss to the complainant. The respondent company is having mala fide intention and conduct to dupe the hard earned money of the complainant. The complainant also deserves enhanced cost of construction. Though in order dated 03.12.2020 it was observed by Hon'ble Authority that in case respondent fails to pay the upfront amount to the complainant in the prescribed period, it will further attract interest which will be decided by Authority, yet the order of Hon'ble Authority has not been complied with by the respondent. The respondent has caused delay of 14 years from the

date of booking of the unit. Till date there is no time period given by the respondent to hand over possession, as till date even builder buyer agreement has not been executed. The delay caused by the respondent has given immense stress, mental pain, frustration and ill health to the complainant. It has caused trauma to the complainant. The complainant has suffered immense harassment on account of delay and litigation. The respondent by not delivering the possession of commercial unit on time, by deliberately not complying with orders passed by Hon'ble Authority in the complaint as well as execution, has caused severe harassment to the complainant. The complainant is required to be compensated equitably. As per Section 13 of RERA Act, the respondent could not have demanded more than 10% of the total cost of the plot, despite that the complainant has already paid 25% of total sale consideration. The complainant has filed complaints bearing no. 2215 of 2019 titled as V.P. Batra v/s Parsvnath Developers Ltd. and execution petitions no. 780 of 2020 and 940 of 2021 both titled as V.P. Batra v/s Parsvnath Developers Ltd. The respondent company has not challenged any of the orders passed by Hon'ble Authority and the orders have attained finality. By way of the present complaint, the complainant has sought litigation cost of ₹3,00,000/- for filing of four cases before Hon'ble Authority and also before this Court, ₹10,00,000/- compensation for mental agony, harassment, stress and torture caused by inaction of the respondent company and made the complainant to wait for more than 14 years, compensation of ₹2,00,000/- for loss of opportunity of ₹1,00,000/- for repetitive

nature of default. The respondent company is still causing delay in handing over the possession of commercial unit and also not complying with the orders of Hon'ble Authority.

2. Upon notice, respondent appeared through counsel and filed reply taking preliminary objections that the complaint is not maintainable and liable to be dismissed. The ingredients of Section 72 of the Act are missing in the present case. Sub Sections (a) and (d) of Section 72 of the Act set out four different factors that are required to be considered by the Court while adjudging compensation. After taking evidence of both the parties, the Adjudicating Officer shall consider the material on record in the context of the factors enumerated in Section 72. Only after assigning reasons proceed to decide prayer for compensation. The factors which are relevant vary from project to project and locality to locality. The complainant has filed the present complaint under unamended Rules. Preliminary submissions have been made stating that Sonapat Municipal Council had allotted a plot measuring 19509 sq. yards (4.03 acres) also known as the Old Civil Hospital Site at Sonapat initially to M/s Prakash Infrastructure Pvt. Ltd., S-208, Panchsheel Park, New Delhi being the successful bidder in auction conducted on 27.12.2004. The said allotment was made vide memo dated 11.07.2005 for development into a Commercial Complex. Vide Municipal Council memo dated 19.05.2006 M/s Prakash Infrastructure Pvt. Ltd. had transferred allotment of the said plot to M/s Vardaan Buildtech Pvt. Ltd., 6/1, First Floor, South Patel Nagar, New Delhi i.e. land

owner. The land owner has paid entire consideration amount/allotment money to Municipal Council and has physical possession of the plot. On 16.06.2008 the respondent had entered into a development agreement. As per the terms of the said agreement, the respondent is fully entitled/authorized and competent to market, sell and allot in its own name the shops/show rooms and the build-up areas in the complex and to enter into agreements of sale/allotment to receive sale consideration. On 06.08.2008 the complainant had applied for registration of commercial showroom, GF-132 in TDI City Mall, Railway Road, Sonapat through M/s Vardaan Buildtech Pvt. Ltd. for an area measuring 586 sq. ft. and deposited a booking amount of ₹8,75,000/- after going through all the stipulated terms and conditions of booking form voluntarily. Vide letter dated 10.09.2008, the complainant was duly informed that the development rights of commercial mall formally known as TDI City Mall to be developed at Civil Hospital ^{Site} ~~Site~~, ⁵⁹ Railway Road, Sonapat, the name of the Mall had been changed to Parsvnath City Centre. Complaint is bad for misjoinder and non-joinder of parties. Basic sale price of the said shop was agreed at ₹41,02,500/-. The complainant had deposited ₹10,25,500/- till date with respondent company against the said booking. The project of respondent company has been duly registered on 28.08.2017. On merits, all the preliminary objections have been reiterated and it has further been stated that no cause of action has arisen in favour of the complainant. The complainant remained in default for a considerable time and hence cannot claim any relief from this Court. The complainant is misquoting

the order dated 03.12.2020, as Hon'ble Authority in its subsequent orders has categorically held that the builder buyer agreement cannot be executed in the present case. The claim of the complainant is barred by limitation. The complainant has failed to make out a case for compensation and is trying to mislead the Court. The complainant has miserably failed to make the timely payments which has caused immense prejudice to the project. The respondent has prayed for dismissing the complaint.

3. As per version of the complainant, he had booked a commercial unit in Parsvnath City Centre, project of respondent in the year 2007. He has stated that he had paid an amount of ₹10,25,500/- out of total sale consideration of ₹41,02,500/-. In reply, it has been stated by respondent that on 06.08.2008, the complainant had deposited ₹8,75,000/- and ₹10,25,500/- had been deposited till the date of filing reply i.e. 03.02.2022. It is admitted by both the parties that builder buyer agreement has not been executed. As per version of the complainant, vide order dated 17.12.2019 Hon'ble Authority had directed the respondent to execute builder buyer agreement within a period of one week in Complaint no. 2215 of 2019 titled as V.P. Batra v/s Parsvnath Developers Ltd. On the other hand, it has been stated by the respondent that the complainant has not read the remaining orders of Hon'ble Authority and vide order dated 03.12.2020 passed by Hon'ble Authority, it was observed that the builder buyer agreement could not be executed. The copy of order dated 03.12.2020 in Complaint no.780 of 2020 has been placed on the record as Annexure R-3. In

para no.7 of the aforesaid order, it has been observed that 'execution of builder buyer agreement is basically required to ascertain deemed date of possession for the purpose of calculating interest in case there is delay in handing over the possession of booked property. In the present case, Authority has already fixed interest to be paid to the complainant at 9% p.a. from the date of deposit, therefore execution of builder buyer agreement at this stage will not serve the purpose as intended. Therefore respondent is directed to execute builder buyer agreement as soon as he gets all the necessary approvals'. It has not been observed by Hon'ble Authority that builder buyer agreement cannot be executed, rather directions have been given to respondent to execute builder buyer agreement as soon as it gets all the necessary approvals. Admittedly builder buyer agreement has not been executed till date. Since the order dated 17.12.2019 passed by Hon'ble Authority in Complaint no. 2215 of 2019 was not executed by the respondent, the complainant had filed execution Complaint no.780 of 2020. In that complaint the representative of the respondent had stated that respondent will not be able to execute builder buyer agreement as the building plans of the project had been revised and were yet to be approved by competent Authority. Delay interest was also calculated to be paid by the respondent to the complainant and respondent was directed to pay an amount of ₹12,29,855/- as delay interest. Even this order was not complied with by the respondent and the complainant had filed another execution petition bearing no.940 of 2021. The respondent in its preliminary submissions, in para no.9 has

stated that the project of respondent company has duly got registration vide memo dated 28.08.2017. Meaning thereby, the project of the respondent was registered after taking all the necessary approvals. Even after taking all the necessary approvals and getting the project registered, in the year 2017, builder buyer agreement has not been executed even till now. The respondent has admitted in its reply that a sum of ₹8,75,000/- was deposited by the complainant with the respondent on 06.08.2008. Copy of customer ledger dated 29.09.2021 has also been placed on record by learned counsel for the respondent as Annexure R-2, showing that on 06.08.2008 a sum of ₹8,75,000/- and on 03.10.2008 a sum of ₹1,50,500/- had been deposited by the complainant V.P. Batra with the respondent and the total of the amount has been shown as ₹10,25,500/-. The amount of ₹10,25,500/- was being utilized by the respondent till 30.03.2022 i.e., date of passing this judgement. For all these 14 long years, the respondent had been utilising the amount of ₹10,25,500/- paid by the complainant which can be termed as disproportionate gain to the respondent and loss to the complainant which can be further termed as a result of continuous default committed by the respondent. It would be in the interest of justice if the compensation to be paid to the complainant is determined after taking into account the default from 06.08.2008 to 30.03.2022 for ₹8,75,000/- i.e. 13 years and 240 days & 03.10.2008 to 30.03.2022 for ₹1,50,500/- i.e. 13 years and 182 days. The compensation is quantifiable and it would be appropriate if the amount of compensation is calculated at the rate of 6% per annum. In 2020 SCC

online SC 667 titled as Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and others v/s DLF Southern Pvt. Ltd., it has been observed by Hon'ble Apex Court in Para no.55 that

the first and second respondents shall, as a measure of compensation, pay an amount calculated at the rate 6 per cent simple interest per annum to each of the appellants. The amount shall be computed on the total amounts paid towards the purchase of the respective apartments with effect from the date of expiry of thirty-six months from the execution of the respective ABAs until the date of the offer of possession after the receipt of occupation certificate.

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹8,75,000/-	06.08.2008 to 30.03.2022	6 %	₹7,17,021/-
₹1,50,500/-	03.10.2008 to 30.03.2022	6%	₹1,21,893/-
Total			₹8,38,914/-

4. (i) Under relief clause (i) the complainant has sought compensation towards litigation cost of ₹3,00,000/- towards filing of four cases before Hon'ble Authority and this Court to get his rights adjudicated. Admittedly, the complainant had initially filed Complaint no. 2215 of 2019,

later on filed Execution Complaint no.780 of 2020 and the second Execution Complaint no. 940 of 2021 all titled as V.P. Batra v/s Parsvnath Developers Ltd. Since the copies of Complaint no. 2215 of 2019 and Execution Complaints no. 780 of 2020 and 940 of 2021 have not been attached by the complainant, it is not apparent on the record as to whether compensation by way of litigation cost was demanded by the complainant or not. Copy of order dated 17.12.2019 passed by Hon'ble Authority in Complaint no. 2215 of 2019 and copy of order dated 03.12.2020 passed by Hon'ble Authority in Complaint no.780 of 2020 have placed on the record, in none of those orders, cost of litigation has been awarded in either of 3 complaints. If cost of litigation is not specifically awarded either in Complaint no. 2215 of 2019 or Execution Complaint no. 780 of 2020, it can be said to have denied. Complainant cannot ask for cost of litigation in one complaint relating to filing of other complaint. In the present complaint, cost of litigation is assessed at ₹25,000/- in favour of the complainant.

- (ii) The complainant has sought compensation to the tune of ₹10,00,000/- for mental agony, harassment, stress and torture caused by inaction of respondent company and making the complainant wait for more than 14 years. In the present case compensation on account of mental agony, harassment has been assessed at ₹8,38,914/- in favour of the complainant.
- (iii) The complainant has sought compensation to the tune of ₹2,00,000/- for loss of opportunity, as he is businessman by profession. It has

been argued by learned counsel for complainant that he could have 'invested the amount of ₹10,25,500/- at some other place and would have earned profit.

In the absence of any evidence for loss of opportunity, the complainant cannot be granted compensation for loss of opportunity. Hence compensation on this ground is declined.

(iv) The complainant has demanded compensation of 1,00,000/- for repetitive nature of default. The respondent company is still causing delay in handing over the unit and has not complied with orders of Hon'ble Authority. Compensation has been granted to the complainant on account of default committed by the respondent, separate compensation cannot be paid on the ground of repetitive nature of default.

4. Sequel to aforesaid discussion, this complaint is partly allowed. Respondent is directed to pay an amount of (₹8,38,914/- + ₹25,000/-) = ₹8,63,914/- (Rupees Eight Lakhs Sixty Three Thousand Nine Hundred Fourteen only) to the complainant in lieu of compensation. The amount shall be paid in two instalments, first instalment of 50% of the amount shall be paid within 45 days of uploading of this order and remaining amount to be paid as second instalment within next 45 days.

Saeta Gupta

5. In these terms, the present complaint stands disposed of. File be consigned to record room after uploading order on the website of the Authority.

30.03.2022

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

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

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

