



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 1306 OF 2021

Shakuntala Malik & Rohit Malik

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 30.03.2022

Hearing:

1st

Present: -

Mr. Sanjay Sharma, 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 the complainant's case are that they had booked a shop in the year 2009 in a project named 'Parsvnath Mall' being developed by respondent. A Builder Buyer agreement was executed between the parties on

08.07.2009 and unit no. UGF-12 admeasuring 662 sq.ft. was allotted to them. A copy of original BBA has been annexed as Annexure A-1.

Basic sale price of shop was ₹30,65,887.50/-. In accordance with the payment plan, complainant by the year 2008 had paid a total amount of ₹10,73,060.63/-. The complainants have annexed copies of payment receipts as Annexure-2 to Annexure A-4.

2. As per clause 10(a) of BBA construction of shop was to be completed within 30 months with grace period of six months from the date of commencement of construction. The complainants have alleged that from 15.07.2014 they started writing to respondent for refund of their amount along with interest since the project was completely abandoned. On 10.07.2021, respondent issued a cancellation letter to the complainants informing that since construction in the project could not continue at a regular pace, they are cancelling the booked unit and amount of ₹10,73,060.63 was being refunded to them by way of two cheques bearing nos. 355365 and 355366. However, said letter never spoke about the interest accrued on the amount deposited by the complainants and which kept lying with respondent for such long time. So, prayer has been made that respondent may be directed to pay interest to the complainants on the amount paid by them from the date of payments made till the date of refund/filing of the complaint.



3. Respondent in its reply filed on 16.03.2022 has taken preliminary objections that present complaint is not maintainable as Authority does not have jurisdiction to entertain it in view of relief prayed for. It has been submitted that entire sale consideration received from the complainants has already been refunded to them on 10.07.2021 and the contract stands cancelled. Cheques refunded to complainants along with letter dated 10.07.2021 were encashed by them without any reservation. So, present complaint is an afterthought and has been filed on 11.11.2021 and as such, on the date of filing of complaint there was no subsisting valid contract between the parties. Therefore, present complaint may be dismissed instantaneously.

4. Learned counsel for the complainant argued that the respondent had kept the hard earned money of the complainants for a period of more than 12 years. He argued that as per clause 8 of BBA executed between the parties, respondent had agreed that in case it fails to deliver possession of the shop for any reason, it would refund the amount along with 10% interest. So, complainants may be awarded interest from the date of respective payments.

5. Learned counsel for the respondent on the other hand argued that since the amount paid by the complainants has already been refunded to them, contract between the parties has ended and now complainants can't raise any claim thereafter in absence of any contract between them. Therefore, present complaint may be dismissed.



6. After hearing contentions of both the parties and going through the documents on record, it is revealed that complainants had booked a shop in respondent's project and had paid a sum of ₹10,73,060.63/-. On failure on part of respondent to complete the project, vide letter dated 10.07.2021 respondent cancelled the unit of the complainants and refunded the amounts deposited by them by way of two cheques. Said cheques were accepted by the complainants and were encashed by them. Meaning thereby they accepted the cancellation of their unit. However, respondent did not pay them any interest on the amount deposited by them which kept lying with respondent for several years. As per Section 18(1)(b) of RERA Act, if promoter fails to complete the project or is unable to give possession of unit, he shall be liable to return the amount received by him with interest. Said section is reproduced here for reference:

“Section 18: (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf

including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.”

Hence, respondent can't be allowed to escape his liability by merely stating that since amount stands paid to the complainants, contract stands concluded. It is observed that the contract will not conclude unless there are any subsisting obligations. And in the present case, respondent has not paid the complainants interest at the time of refunding the amount. So, his obligation of paying interest on the amount paid by complainants has not concluded. Accordingly, interest from the dates amounts were paid by complainants till it was refunded back to them i.e. 10.07.2021 will remain payable by respondent. Therefore, respondent is directed to pay the complainants interest on paid amount of ₹10,73,060.63/- 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 9.30% (7.30% + 2.00%) from the date amounts were paid till 10.07.2021. Authority has got calculated the interest payable to the complainants and same has worked out to ₹13,83,849/-.

Respondent is directed to make the entire payment of ₹13,83,849/- to the complainants within 90 days from the date of uploading of this order, as



provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

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



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RAJAN GUPTA
[CHAIRMAN]



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DILBAG SINGH SIHAG
[MEMBER]