



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

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BEFORE ADJUDICATING OFFICER

Complaint no. 02 of 2022

Date of Institution: 25.01.2022

Date of Decision: 21.04.2022

Harbinder Singh Kapany s/o Sh. R.S. Kapany, r/o 103, The Mall, Ambala Cantt.,
Haryana - 133001

....COMPLAINANT

VERSUS

1. M/s Parsvnath Developers Ltd., G-2, Ground Floor, Arunachal, 19,
Barakhamba Road, New Delhi-110001
2. Mohan Property Dealer, Old DC Road, Near Bhagat Hospital, Sonapat –
131001

....RESPONDENTS

Hearing: 4th

Present: - Mr. Akshat Mittal Advocate, counsel for the complainant through
video conference
Mr. Harbinder Singh Kapany, complainant through video conference
Ms. Rupali S. Verma Advocate, counsel for the respondent no.1
through video conference
None for respondent no.2

Sapita Gupta

JUDGEMENT:

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

1. Sh. S.C. Bhargava, the original allottee had applied for allotment of residential plot in District Sonapat, Haryana under the present and future projects scheme in the year 2004 in Parsvnath City. He entered the booking of residential plot measuring 500 sq. yards @ ₹3500/- per sq. yards. He was allotted customer code no. PS/S0040. The plot was offered for a total sale consideration of ₹17,50,000/-. A sum ₹2,75,000/- was paid by S.C. Bhargava to respondent no.1 on 15.06.2004 through cheque dated 14.06.2004. He transferred his rights in the said residential plot in favour of the complainant Harbinder Singh Kapany in the later part of the year 2004. On request of the complainant to respondent no.1 to transfer the said residential plot booking in favour of the complainant, respondent no.1 agreed to transfer the booking of plot in the name of complainant subject to deposit of at least 50% of the amount towards sale consideration of the plot. Vide cheque dated 09.02.2006 further payment of ₹6,00,626/- was made by the complainant to respondent no.1. Subsequently the complainant had made further payment of ₹1,50,000/- in cash to respondent no.2, Mohan Property Dealer to be paid to respondent no.1. No receipt/acknowledgment was issued by respondent no.1. A total amount of ₹10,25,626/- towards the sale consideration qua the plot

has already paid to the respondents. After a number of reminders, the respondent company duly confirmed the factum of substitution of the name of the complainant vide letter dated 07.10.2006 in place of Sh. S.C. Bhargava and further confirmed the endorsement of receipts in favour of the complainant. Respondent no.1 has miserably failed to offer possession of the plot, despite assurance given to the complainant to offer possession of the plot within a period of 3 years of booking. As such the respondent was duty bound to offer possession of plot to the complainant latest by 14.06.2007. Even after $17\frac{1}{2}$ years of the booking, the respondent has failed to offer possession of the plot. A number of emails were sent by the complainant to the respondent. Hard earned money of the complainant had been struck with the respondent for a continuous period of $17\frac{1}{2}$ years. The complainant has filed Complaint no.1417 of 2021 before Hon'ble Authority seeking possession of the plot along with delayed possession charges. The delays and mala fides on the part of respondent no.1 have resulted into extreme disproportionate gain and unfair advantage to the respondent no.1 which has been in continuous possession of the amounts paid by the complainant without any intention to comply with promises. Cause of action is continuous and default is repetitive in nature as the possession has not been handed over despite lapse of $17\frac{1}{2}$ years. The complainant had entered into booking of the plot in Sonipat in the year 2004 with the aim of relocating close to his family and aged mother at Delhi and with the aim of providing better education to children, top notch academic institutions being closer to Sonipat, such as in N.C.R./Delhi. The

complainant had to visit the office of respondent at different places. At the time of transfer of plot in the name of complainant, after repeated persuasions, the complainant was allotted a priority no.190. The respondent did not offer timely possession of residential plot. The children of the complainant were growing up. Having no place to reside closer to Delhi, the complainant had put his son in a boarding school namely Amity International School at Noida. Being worried about his family's health, the son of the complainant could not adjust in the said boarding school and had to be taken out mid-session and had to be admitted in a dummy school at Ambala, the place of residence of the complainant. The factum of putting his son in boarding school and subsequent setbacks and logistics involved in supporting the same also had huge financial implications. The complainant and his family members had to stay in hotels in Delhi sometimes to meet their son and also had to engage for transport for the frequent travels to and from home town Ambala to Delhi/Noida. Subsequently to provide better education to daughter of the complainant and having failed to get possession of the plot at Parsvnath City, Sonipat, the complainant had to put his daughter in a school at Chandigarh, for which she had to commute daily for 2 years. Because of certain medical ailments, the complainant and his wife on different occasions were referred to hospital in Delhi and had to stay in hospitals and incur financial, mental and physical ramification, which could have been avoided had the respondent no.1 offer possession of the plot on time. In March, 2011, the complainant had to undergo major spine surgery and few day after the operation

when the stitches had not healed, the complainant went to office of respondent no.1 to apprise it of his plight but with no result. The respondent had given an offer of an alternate plot at its project at Derabassi, which was agreed by the complainant but respondent no.1 subsequently refused to honour the said offer. The direct and indirect effects of the inactions and malafides of the respondent company in not allotting and offering possession of the plot to the complainant, have left an unimaginable and endless amount of mental, physical and financial harassment on the complainant. The complainant has also suffered extreme pecuniary loss qua cost escalation for similar property during these 17 years. The price of the plot in question at the time of booking, 17 years back in the year 2004 was agreed at ₹3,500/- per sq. yard. The prices of similar properties in the area in question have risen manifolds and the complainant was completely left behind and has not even been offered possession of the plot. Being highly aggrieved and frustrated by the entire circumstances and faced by the miserable attitude of the respondent had rendered the complainant completely shattered and heartbroken. The conduct and acts of the respondent company also amount to several criminal offences including but not limited to fraud and cheating and the respondent is responsible for causing excessive harassment to the complainant. By way of present complaint, the complainant has sought compensatory interest @ 24% p.a. compounded monthly for continuous delay in offer of possession on the entire amount deposited by the complainant and ₹20,00,000/- on account of mental harassment, agony, grievance and frustration caused to the complainant by

deficiency in service, unfair trade practice and miserable attitude of the respondent along with interest and litigation cost of ₹1,50,000/-.

2. Upon notice, respondent no.1 appeared through counsel and filed reply taking preliminary objections that the complaint is not maintainable as the complainant is not an allottee of respondent company. The complainant is not covered under definition of allottee as per Section 2(d) of the RERA Act, 2016. The complainant was never given any allotment. In the present case, the endorsement is for future project of the respondent. Since the complainant was not allotted any unit, no cause of action has arisen in favour of the complainant. The complaint is barred by limitation. In the absence of any pleadings with regard to condonation of delay, this Court would not have entertained the complaint. Complainant is guilty of delay and laches. There is no agreement to sell between the parties. The complainant has no locus standi to file the present complaint. There is no contravention of any provision of RERA Act on behalf of the respondent no.1 qua the complainant. No ground of compensation is made out in favour of the complainant, who is a speculator and has purchased mere expression of interest to gain profit. Ingredients of Section 72 RERA Act are missing. Sub-Section (a) to (d) of Section 72 set out four different factors that are required to be considered by the Adjudicating Officer while adjudging compensation or interest. Section 72 of RERA Act is not exhaustive but merely illustrative of the factors that an Adjudicating Officer may take into consideration while adjudging compensation. A person praying for compensation is required to adduce relevant

material to specify factors set out in Section 72 of the Act. The promoter may also adduce material to rebut the claim for compensation. The Adjudicating Officer shall consider the material on record in the context of factors enumerated in Section 72. These factors cannot be placed in straight jacket as they would vary from project to project, locality to locality and city to city. The opinion framed by Adjudicating Officer must be founded upon a perceptible process of reasoning based upon relevant factors. The ingredients of Section 72 of the Act are missing. The complainant has filed the present complaint under unamended rules. Preliminary submissions have been made that on 15.06.2004, Sh. S.C. Bhargava who was the original allottee had applied for registration of a plot measuring 500 sq. yds. in any of the future projects of the respondent. On 15.06.2004 itself, he had deposited ₹2,75,000/- towards his expression of interest in future allotment. No location and site of the project was ever confirmed. Sh. S.C. Bhargava, the original applicant had given an undertaking at the time of filling the application form that in case no allotment is made, he would accept the refund. The relevant clauses of application form are that respondent would offer the applicant a residential plot which the respondent company may promote in near future within a period of six months, the advance would be adjusted against the booking amount payable by the allottee and when the residential plot is allotted in the name of allottee, in the event the residential plot is allotted after 9 months, simple interest @ 10% p.a. shall be paid to the allottee for the period delayed beyond 9 months on the amount paid by allottee as advance till such time the allottee is

allotted residential plot against the price of the plot, in case the company fails to allot a plot within a period of 1 year from the date of making payment, the allottee would have option to withdraw the money by giving one month's notice. The company shall allot a residential plot at the price which is less by ₹500 per sq. yard than the launch price and company shall try to make an allotment, in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by the allottee except that advance money paid by the allottee shall be refunded to him with 10% simple interest per annum. As per clause (f) of application form, the original applicant has clearly understood that no property has been allotted to him and he has further given undertaking that in case no allotment is possible, he would accept the refund with simple interest @ 10% per annum. The filing of complaint is nothing but an abuse of process of law. On 07.10.2006 the original applicant had transferred his rights and liabilities in favour of Harbinder Singh Kapany, the present complainant and the complainant had given an undertaking that in case no allotment is possible he would accept refund with simple interest @ 9% per annum. The complainant has never approached the respondent for refund. Clause 7 of the affidavit dated 10.02.2006 given by the complainant clearly stipulates that in case the complainant is not allotted any plot in new project of respondent, he shall accept refund of the deposited amount along with 9% simple interest per annum. The complainant has made the payment of ₹8,75,626/- till date which was towards his expression of interest to get allotment in future project of respondent. At the time

of endorsement in favour of complainant, neither the complainant nor his predecessor in interest raised any demand for refund. There was no allotment in favour of original applicant, which was never objected to by the complainant. No demand was raised by the respondent from the complainant, which establishes the fact that there was registration in favour of complainant. In the absence of any agreement, the complainant is bound by terms and conditions of application form and affidavit-cum-undertaking and indemnity duly signed by the complainant.

3. On merits, it has been stated that no project much less allotments was ever assigned to the complainant. Complainant out of his own free will approached his predecessor for getting registration in the present and future scheme of the respondent. Registration was merely an expression of interest in upcoming project of the company. It is denied that the price or size of future allotment was ever fixed. The original applicant had paid ₹2,75,000/- to the company. Complainant has not paid anything to the respondent till date. It is denied that ₹1,50,000/- has been paid to respondent no.1, M/s Parsvnath Developer Ltd. Respondent no.2, Mohan Property Dealer does not have any concern with the respondent company. The original applicant has paid ₹8,75,626/- till date to respondent no.1. The complainant had signed affidavit-cum-undertaking and indemnity, which clearly stipulates that in case the complainant is not allotted any plot in future project of respondent, he shall accept refund of deposited amount with 9% simple interest per annum. The complaint is barred by limitation and beyond the understanding between the parties. There is

no agreement for sale. Reiterating all the preliminary objections, the respondent has prayed for dismissal of the complaint.

4. Service of respondent no.2 was successfully effected but none has appeared on behalf of respondent no.2.

5. Perusal of file shows that complainant has himself claimed that he is not the original applicant. The original applicant was Sh. S.C. Bhargava who had booked a residential unit measuring 500 sq. yards @ ₹3,500/- per sq. yard. Customer code number was allotted to him. The total sale consideration was ₹17,50,000/-. Initially a sum of ₹2,75,000/- was paid by the original applicant Sh. S.C. Bhargava on 15.06.2004 and later on, on 09.02.2006, the original allottee had made further payment of ₹6,00,626/-. Though in the pleadings the complainant has stated that a sum of ₹6,00,626/- was paid by him but record shows that the said payment was made by Sh. S.C. Bhargava, the original allottee. Though it is also the argument of learned counsel for the complainant that a sum of ₹1,50,000/- was paid by the complainant in cash to respondent no.2, Mohan Property Dealer, yet in the absence of any receipt, this argument of learned counsel for the complainant is not accepted. Instead of ₹10,25,626/- as claimed by the complainant having been paid to respondents no.1 and 2 towards total sale consideration, a sum of ₹8,75,626/- (₹2,75,000/- + ₹6,00,626/-) is admittedly paid by the original allottee to respondent no.1. It is the argument of learned counsel for complainant that within a period of 3 years from the date of booking i.e. 15.06.2004, the respondent no.1 was bound to deliver possession of plot to the

complainant i.e. upto 14.06.2007. Even after lapse of $17\frac{1}{2}$ years of booking, possession of plot has not been offered to the complainant. The complainant has also filed Complaint no.1417 of 2021 before Hon'ble Authority seeking possession of the plot along with delayed possession charges.

6. It has been argued by learned counsel for respondent that no compensation can be awarded to the complainant as he is not an allottee of respondent company. In fact one Sh. S.C. Bhargava had booked a plot in present and future project of the respondent company. Since Sh. S.C. Bhargava was not allotted any plot, resultantly there was no allotment of plot in favour of complainant also. In the absence of any allotment, the complainant cannot be said to be an allottee and he is not covered under the definition of allottee in Section 2(d) of RERA Act and the present complaint is not maintainable under RERA Act.

7. Admittedly, no plot was allotted in favour of Sh. S.C. Bhargava, who had originally booked a plot in the present and future project of respondent company. But RERA Act has not made any distinction between home buyer, who has been allotted a plot/flat/unit and the home buyer who has booked a plot/flat/unit in the project of respondent company. The fact remains the same that Sh. S.C. Bhargava had paid an amount of ₹2,75,000/- on 15.06.2004 at the time of booking and ₹6,00,626/- on 09.02.2006. It is also not disputed even by the respondent that booking was purchased by the present complainant from Sh. S.C. Bhargava. The present complainant has stepped into the shoes ^{of} ~~into~~ Sh. S.C. Bhargava who had booked a plot. There is no force in the argument of learned counsel for respondent

and the present complainant would be treated as an allottee under Section 2(d) of the RERA Act.

8. Learned counsel for the complainant has argued that for better education of his children, he had booked a plot at Sonapat being near to Delhi. Since the possession of plot could not be offered, he had no option but to put his son in a boarding school namely Amity International School, Noida. Despite best efforts, the son of the complainant could not adjust in the said boarding school, as he kept worried about his family, he was taken out mid-session and had been admitted to a dummy school at Ambala. It had caused great financial implications to the complainant and his family.

9. Firstly learned counsel for the complainant has not placed on record any document showing that he had got admitted his son in Amity International School at Noida. There are no documents showing frequent visits of the complainant and his wife to Delhi/Noida to meet their son or dropping off the school course by son of the complainant at Noida because of mental pressure faced by the son of the complainant in non-providing the possession of the plot at Sonapat.

10. Another factor contributing mental harassment has been taken by the complainant that the daughter of the complainant was got admitted in a school at Chandigarh for which she had to commute daily for 2 years. Had the possession of the plot been delivered to the complainant, after constructing his house at

Sonepat, he could get admitted his daughter at Delhi. This is also an oral version and no document relating to daughter of the complainant has been attached.

11. Next factor contributing mental harassment of the complainant is that the wife of complainant was hospitalised because of mental harassment suffered by the complainant and his wife due to non-delivery of possession of plot. Learned counsel for the complainant has placed on record copy of prescription slip dated 01.10.2009 by Max Institute of Neurosciences. He has also placed on record copy of discharge summary of wife of complainant who remained admitted in Sita Ram Bhartia Institute of Science and Research, date of admission has been shown as 01.01.2012 and date of discharge as 05.01.2012 and diagnosis has been shown as fibroid uterus with right ovarian cyst. Another copy of discharge summary is from the same hospital, date of admission as 15.09.2013 and date of discharge is 17.09.2013 and diagnosis has been shown as left ovarian cyst. So far as either neuro problem or ovarian cyst are concerned, they have nothing to do with the mental pressure or harassment suffered by wife of the complainant. In none of the discharge summary brief history says that it was because of mental harassment or pressure. Learned counsel for the complainant has also placed on record copy of discharge summary of the complainant from Fortis Hospital, Noida, date of admission has been shown as 28.03.2011 and date of discharge as 05.04.2011 and the diagnosis has been shown as L4-L5 listhesis. The complainant was suffering from lower back pain for last 2-3 years gradually increasing. Learned counsel for the complainant has failed to show any relevancy

of lower back pain with mental harassment caused to the complainant because of non-delivery of plot by the respondent no.1 to the complainant. Hence no compensation is being awarded to the complainant on account of admission of son and daughter of the complainant at different schools or hospitalization of complainant or his wife.

12. The next argument raised by learned counsel for respondent is that no agreement to sell was executed between the complainant and respondent. Learned counsel for respondent has drawn attention of the Court towards copy of Affidavit-cum-Undertaking and Indemnity executed on 10.02.2006 between the complainant and the respondent company, wherein the complainant has specifically admitted that if allotment of plot is not made in his favour, he will accept the refund of the amount deposited along with simple interest @ 9% p.a. It has further been pointed out by learned counsel for the respondent that at the time of purchase of booking by the complainant, he was well aware that there is no allotment in any project of the respondent. After purchase of booking by the complainant, no demand of any amount has been raised by the respondent company from the complainant. Whatever amount was paid to the respondent company, it was paid by Sh. S.C. Bhargava, the original applicant.

13. Though the counsel for the respondent has rightly said that no amount has been demanded by the respondent company from the complainant and the amount of ₹2,75,000/- + ₹6,00,626/- was paid by Sh. S.C. Bhargava, yet when the booking was purchased by the complainant, it was accepted by

respondent company and also endorsed the booking in favour of the complainant on 07.10.2006, also Affidavit-cum-Undertaking and Indemnity was executed by the complainant on 10.02.2006. When the respondent company itself is admitting that booking of plot has been purchased by the complainant, now it does not lie in the mouth of respondent company to say that the complainant is not recognized as an allottee. There is no force in argument of learned counsel for respondent.

14. It has next been argued by learned counsel for respondent that ingredients of Section 71 and 72 of RERA Act are not complied with in the complaint filed by the complainant. In the absence of ingredients of Section 72 of the Act, the complainant has no right to claim compensation.

15. Perusal of complaint shows that in date wise events after 04.06.2020, at page no.9 it has been mentioned by the complainant that the delays and malafides on the part of respondent no.1 have resulted in extreme disproportionate gain and unfair advantage to the respondent no.1 which has been in continuous possession of the amounts paid by the complainant without any intention to comply with the promises. It is also been mentioned that cause of action is continuous and default is repetitive in nature as the possession has not been handed over despite lapse of more than $17\frac{1}{2}$ years from the date of booking. At page no.11, it has also been mentioned that the complainant has been made to suffer extreme mental harassment and distress at the end of respondent no.1. Since the sufferings and mental harassment of complainant have specifically been

mentioned in the complaint, it cannot be said that the ingredients of Section 71 or 72 of the Act are missing.

16. It has next been argued by learned counsel for the respondent that the complainant was required to file complaint before Hon'ble Authority first seeking refund and delay interest. In the event of Hon'ble Authority coming to conclusion that the complainant is entitled to refund, only in that eventuality after reference by Hon'ble Authority to this Court, cognizance could be taken by this Court with regard to compensation to be paid to the complainant. Since there is no observation or reference by Hon'ble Authority, this complaint is not maintainable.

17. Perusal of file shows that the present complaint seeking compensation has been filed under Section 71 of RERA Act 2016. As per Section 71 of RERA Act, complaint seeking compensation would be filed before Adjudicating Officer. Though in the amended Rules 2019, it has been mentioned that firstly Authority will hold inquiry and then refer the case to Adjudicating Officer for adjudicating compensation. It is worthwhile to mention here that RERA Act 2016 is Central Act and the Rules are framed by State Govt. The Rules have been made to support and explain the provisions of Act, not to contradict the provisions of Central Act. If in the Act itself, it has been mentioned that the complaints for compensation shall be filed before Adjudicating Officer, the Rules made by State Govt. are not to override the vires of the Act.

18. There is no substance in the argument of ld. counsel for the respondent.

19. Further it has been argued by learned counsel for the respondent that there is inordinate delay in filing the complaint by the complainant, as the booking of plot relates to the year 2004 and the present complaint has been filed in the year 2022 i.e. after 18 years. Learned counsel for respondent has relied upon 2022 SCC Online SC 249 titled as Surjeet Singh Sahni v/s State of U.P. and Others in which it has been observed that 'mere representations do not extend the period of limitation and the aggrieved person has to approach the Court expeditiously and within reasonable time'. It has been argued by learned counsel for the respondent that in the present case the complainant is guilty of delay and laches.

20. It is not disputed that booking made by Sh. S.C. Bhargava was in the year 2004 and the complainant had purchased the booking in the year 2006. It is also true that the present case has been filed in the year 2022 after waiting for $17\frac{1}{2}$ long years. It has repeatedly been mentioned in the complaint that the respondent company had promised to give possession of plot within 3 years. A number of emails were sent by the complainant to the respondent company to give possession of the plot. It is a continuous default on the part of respondent company. Despite that possession was not handed over to the complainant. It obviously shows that the complainant was being made false promises by the respondent company that possession would be handed over very soon. In this eventuality, it cannot be said that the complainant was required to file complaint

either seeking refund or interest or compensation within a period of 3 years from the date of booking. Hence this argument of learned counsel for respondent is turned down that the complaint is barred by limitation.

21. In view of foregoing discussion, it is hereby observed that since the purchase of booking in the year 2006, the complainant has been knocking the door of respondent company to take possession of the plot. Neither any project was started nor any allotment was made by the respondent company to the complainant. Amount of ₹8,75,000/- was being utilized by the respondent company the date of its payments i.e. ₹2,75,000/- from 15.06.2004 and ₹6,00,626/- from 09.02.2006. It amounts to unlawful and wrongful gain by the respondent and unlawful loss to the complainant. The complainant has suffered mental agony and harassment at the hands of respondent company for long 17½ years. Since the default committed by respondent no.1 is continuous, the complainant is entitled to be compensated on account of mental agony and harassment.

22. The calculation of compensation is tabulated below:

Compensation Calculation

Amount Paid (in ₹)	Time period	Rate	Compensation Amount (in ₹)
₹2,75,000/-	15.06.2004 to 21.04.2022	6 %	₹2,94,740/-
₹6,00,626/-	09.02.2006 to 21.04.2022	6 %	₹5,84,105/-
Total			₹8,78,845/-

23. The complainant is also awarded ₹25,000/- as cost of litigation.
24. The total compensation comes to ₹8,78,845/-+ ₹25,000 (cost of litigation) = ₹9,03,845/- (Rupees Nine Lakh Three Thousand Eight Hundred Forty Five only).
25. Sequel to aforesaid observations, the present complaint is partly allowed. The respondent is directed to pay an amount of ₹9,03,845/- (Rupees Nine Lakh Three Thousand Eight Hundred Forty Five only) within 90 days to the complainant. First instalment is to be paid within 45 days from the date of uploading of this order and remaining amount within next 45 days.
26. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

21.04.2022

सत्यमेव जयते

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This judgement contains 19 pages and all the pages have been checked and signed by me.

Sarita Gupta
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(DR. SARITA GUPTA)
ADJUDICATING OFFICER