



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 2615 OF 2019

Kamlesh Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 02.02.2022

Hearing:

15th

Present: -

Ms. Megha Gupta, learned counsel for the complainant through video conference

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

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Initiating his arguments, learned counsel for the complainant narrated the brief facts of the case. Complainant booked a residential unit

bearing villa no. A-644 in Block-A, Parsvnath City, Sonapat, Haryana having super area of 194 square yards after depositing an amount of ₹5,00,000/- on 18.09.2005. Thereafter respondent sent a demand letter dated 21.07.2006 for ₹4,20,000/- which was duly paid by the complainant on 03.08.2006. On 18.07.2007 respondent supplied an unsigned copy of the villa buyer agreement to the complainant. Complainant's signatures were taken on said copy and it was stated that it will be provided to the complainant after getting it signed from the authorised representative of the respondent, however no such signed agreement has been provided by the respondent till date. On 18.07.2008, complainant again paid an amount of ₹14,99,168/- towards her villa. Complainant has paid a total sum of ₹24,19,168/- against basic sale consideration of ₹25,00,000/-. As per draft agreement provided by the respondent on 18.07.2007 possession of the villa was to be handed over to the complainant within eighteen months from commencement of construction with grace period of six months after sanction of building plans and approvals from the concerned Authorities. But the complainant has not been handed over possession of her villa till date even after payment of 95% basic sales price. Present complaint has been filed by complainant seeking possession of her villa along with interest @ 18 % p.a. from the date of deposit of the said amount till possession of the villa is handed over to her.

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2. Respondent appeared and filed his reply on 09.03.2020 admitting payment of ₹24,19,168/- made by complainant. However, respondent has raised a preliminary objection that complaint is not maintainable and is liable to be dismissed. It has been contended that on 08.09.2005 complainant had applied for an "expandable villa" of area admeasuring 200 sq. yards. with 800 sq.ft. built area in the new project of respondent company by paying booking amount of ₹5,00,000/-. On 30.12.2006, villa no. A-644 in Block-A of Parsvnath City, Sonapat was offered the complainant with a condition that confirmation of the allotment will be done after receipt of the certain amount mentioned in annexure-I of said letter. Two copies of villa buyer agreement were sent to the complainant on 03.08.2007 and she was requested to sign the same and send it back to the respondent, however, no copy has been sent back to respondent company till date and the complainant failed to abide by terms and conditions of the allotment. It has further been contended that respondent sent various demand letters to the complainant from December 2007 to April 2009 but the complainant miserably failed to make single payment of due instalment. Vide letter 07.03.2008 complainant was duly informed that due to changes/modifications in the layout plan, complainant's villa has been changed/renumbered from villa-A-644 (194 sq. yards) to villa-A-647 (194 sq. yards). It has been stated that time is not of essence in the contract and there is no intentional delay on the part of the respondent company and the



delay in handing over the possession has been caused for the reasons beyond control of the respondent company as land in Sonapat was acquired by the Government.

3. Perusal of file reveals that vide order dated 14.10.2020, Authority had prima facie observed that there is extra ordinary delay on part of respondent in handing over the possession and therefore respondent was directed to pay the complainant interest amounting to ₹23,52,723/- calculated till 14.10.2020. operative part of said order is reproduced below:

“3. Authority prima facie observed that complainant had booked the villa in the year 2005 and had made almost entire payment of the booked property but respondent has been least concerned to deliver the villa even after extra ordinary delay of 15 years. Whereas ordinarily respondent should have completed the project within 3 years and handed over the possession to the complainant accordingly. Delay of about 15 years in handing over the possession is absolutely unwarranted and extra ordinary without any justification.

4. In these circumstances, complainant needs to be compensated for the same. Therefore, respondent is directed to pay delay interest of an amount of ₹23,52,723/- charged from deemed date of possession i.e. 18.07.2009 till date calculated as per Rule 15 of HRERA, Rules. This amount of delay interest is to be paid to the complainant within one month otherwise Authority will be constrained to impose penalty also u/s 63 on the next date of hearing.

Respondent is further directed to intimate as to when he is likely to make an offer of possession of the villa to the complainant.”

4. Respondent failed to comply with above said order and therefore, vide order dated 02.12.2020, show cause notice under Order 21 Rule 37 was ordered to be issued to the Directors of respondent company as

to why they shall not be sent to civil imprisonment for non-payment of the amount in question. Operative part of said order is reproduced below:

“4. After hearing both the parties and going through the record, the Authority observes that plea now being raised by learned counsel for the respondent has not been raised in the reply filed on record. Therefore, the Authority does not take cognizance of above said plea as it is beyond pleadings. Respondent was directed to pay delayed interest to the complainant within a month but he has failed to do so and is just trying to delay the matter. So, the Authority while taking this non-compliance seriously and exercising its power under Section 40 of the RERA Act, 2016 read with Rule 27 of HRERA Rules, 2019 enabling it to execute its orders as a decree of Civil Court has decided to invoke the provisions of Order 21, Rule 37 of the Code of Civil Procedure, for issuing a show cause notice to the Directors of the respondent company namely Sh. Pradeep Kumar Jain, Sh. Sanjeev Kumar Jain and Sh. Rajeev Jain as to why they shall not be sent civil imprisonment for non-payment of the amount in question. Such notice be issued for 19.01.2021 directing the Directors to file their reply, if any, with a copy to the complainant atleast one week prior to the next date or pay the amount before that.”

5. Respondent continued to defy the orders passed by the Authority, and on hearing dated 19.01.2021 learned counsel for the respondent stated that she wish to file additional reply in the matter. The Authority had again observed that interest for delay caused in handing over possession was admissible and will remain payable to the complainant and same will not be affected by additional reply to be filed by respondent. Accordingly, respondent was redirected to pay to the complainant delay interest of ₹23,52,723/- before next date of hearing. Operative part of said order is reproduced below:



“2. Learned counsel for the respondent states that she wishes to file an additional reply in the matter for which she seeks some time. She further states that respondent will be in a position to offer possession of the villa booked by the complainant within 6-8 months subject to approval of layout plans and defreezing of certain plots.

3. On perusal of record, Authority observes that respondent vide order dated 02.12.2020 was directed to either file reply to show cause notice issued or else pay the amount of delayed interest as calculated by the Authority by today. However, no compliance has been made by the respondent and there seems no justifiable cause for non-payment of delayed interest as already ordered by the Authority. The Authority prima facie observes that respondent was under an obligation to hand over the possession of the plot by 2009. Already there is delay of approximately 12 years, but neither possession of the villa has been offered nor delay interest has been paid to the complainant. The amount of delay interest accrued till date will remain payable to the complainant whether order of refund or of possession is passed in favour of complainant. Said interest will remain admissible and will not be affected by any additional reply filed by the respondent. However, on request of respondent case is being adjourned to 03.02.2021 with a direction to the respondent to pay delay interest of ₹23,52,723/- to the complainant before the next date of hearing failing which the conduct of the respondent will be construed as deliberate disobedience of the orders of the Authority and the Authority will be constrained to issue arrest warrant against the Directors of the respondent company. Further, a show cause notice is issued to the respondent as to why a penalty of ₹25,000/- be not imposed upon him for non-complying with the orders of the Authority.”

6. The matter was then heard on 03.02.2021 when respondent sought adjournment via email instead of complying with the orders of Authority. Therefore considering defiance of the orders by respondent, Authority decided to issue Warrants of arrest against the Directors of the



respondent company and further penalty of ₹25,000/- was imposed on respondent. Operative part of said order is reproduced below:

“2. The respondent has remained defiant till date and has not complied with the orders. Instead of showing compliance, the respondent has today sent an email to the Authority requesting an adjournment. No explanation has been furnished in the said e-mail for noncompliance of the orders. So, the Authority does not find any ground for not proceeding further in the direction as was explicitly disclosed in its above quoted order dated 19.01.2021.

3. Warrants of arrest be now issued against the Directors of the respondent company. Further, since the respondent has failed to show cause against the penalty of Rs. 25,000/- proposed in the order dated 19.01.2021, said penalty is affirmed.

4. The respondent was also imposed a cost of Rs. 5000/- and Rs. 2000/- payable to the Authority and the complainant respectively in its order dated 06.02.2020 which is not yet paid. So, the respondent is also directed to pay the penalty amount and the cost before the next date of hearing. It shall be indicated in warrants of arrest that the Directors shall not be arrested in case they opt to pay the outstanding amount of ₹ 23,52,723/- along with the penalty of ₹25,000/- and costs of ₹7,000/- to the Authority.”

7. Subsequent to the issuance of warrants of arrest vide order dated 03.02.2021, a report dated 28.03.2021 was received in the office of the Authority from Police. Contents of report were recorded in order dated 30.03.2021 which is reproduced below. Also, respondent filed an application dated 17.03.2021 through their advocate for recalling the order dated 03.02.2021 and for keeping coercive action in terms of said order in abeyance. Also, respondent had filed an additional reply in the matter on 18.01.20121 stating that due to revision in layout plan, land earmarked for



complainant's villa has come under road. Said application and additional affidavit were discussed in detail in order dated 30.03.2021. Said order is reproduced here for reference:

"1. In reference to the orders dated 03.02.2021, arrests warrants were issued on 17.03.2021 against the respondents namely Shri Pradeep Kumar Jain and Shri Sanjeev Kumar Jain. Directions were given to the Commissioner of Police, Panchkula to arrest both the Directors of respondent company. On 30.03.2021 a report dated 28.03.2021 has been received from Police Sub Inspector, Akash reporting that when Police Officer went to the residence of Shri Pradeep Kumar Jain for executing arrest warrant, he was informed that Shri Jain is out of station on account of Holi festival. It has been requested that further adjournment may be given for executing the arrest warrants. From the report it is however, revealed that the Police Officer concerned has made no attempt to execute arrest warrants against the other Director of the company named Shri Sanjeev Kumar Jain.

2. In the meanwhile, respondent company had filed an application dated 17.03.2021 through their advocate Ms. Rupali Verma for recalling the order dated 03.02.2021 and for keeping coercive action in terms of the said order dated 03.02.2021 in abeyance. In said application dated 17.03.2021 it has been averred that non-compliance of the orders of Authority is not intentional but is on account of circumstances beyond the control of the company as the company is suffering huge financial crisis on account of Covid-19 pandemic. It has further been stated that the respondent has apprised the Authority that the plot on which the villa was allotted to the complainant has come under road due to which respondent company will not be able to handover possession of the said villa at present or even in future as the land has been acquired by the State Government for the purpose of road. In the circumstances, that the villa cannot be constructed, the respondent is ready to refund the amount deposited by the complainant along with interest as per RERA Act and Rules. Further, the respondents stated that they have already paid an amount of ₹5,88,181/- vide demand draft no.035348 dated 05.02.2021 being 25% of the amount awarded by the Authority. Further, the respondent company is ready to make balance payment of amount in three instalments of same

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amount each starting from 10.04.2021 upto 10.06.2021. A prayer accordingly has been made for cancelling arrest warrants and for granting extension of time for making payment of remaining amount. Further, the respondent may be allowed to refund the entire deposited amount along with interest since the villa allotted to the complainant cannot be handed over even in future due to circumstances beyond the control of the company.

3. The respondents had also submitted additional reply dated 18.01.2021/25.01.2021 before this Authority which could not be discussed by the Authority in its orders dated 03.02.2021. The gist of the additional reply is that the plot in question remained frozen by the State Government authorities on account of re-alignment of the roads in the relevant sectors. Further, the delay caused is beyond the control of the respondents. It had been prayed that on account of the force majeure circumstances explained in the additional affidavit, the claim of possession with delay interest before the Authority is not maintainable and a prayer has been made for dismissal of the complaint.

4. Today, learned counsel for the respondent stated that a demand draft of ₹5,88,181/- has been prepared and will be deposited in the bank account of the complainant during the course of the day.

5. The Authority has examined all facts and circumstances of the case and has also gone through its previous orders. It observes and orders as follows: -

(i) First of all, a reply dated 02.03.2020 was filed by the respondent on 09.03.2020 in which details of the matter as have now been stated by the respondent company in their additional reply dated 18.01.2021/25.01.2021 were not revealed. No mention whatsoever was made that the villa allotted to the complainant cannot be delivered on account of the force majeure conditions of re-alignment of the sector roads and that land of the villa falls in the road itself. Further, even in the additional affidavit no lay out plan of the colony has not been submitted to substantiate their claim that plot actually has come under road. Certain correspondence undertaken with the Town & Country Planning Department and orders of the Director, Town & Country Planning Department however, have been brought on record to show that the plot in question was actually frozen. This fact now will have to be proved with

certainty that the plot on which villa of the complainant was to be constructed has actually come under road and it is not possible for the respondent to deliver the same. Further, the respondent will have to prove without any doubt before the Authority that it is not possible for them to allot any alternate villa to the complainant in the same project, which is as closely and similarly situated as the originally allotted villa. After receipt of this information from the respondent the Authority would proceed further in the matter for passing appropriate orders in regard to the delivery of the possession of the villa.

(ii) Admittedly however, an amount of ₹24,19,168/- had been paid by the complainant to the respondent by the year 2009. Further, admittedly, the alleged force majeure conditions arose during the subsequent years from 2013.

(iii) In the considered view of the Authority if it was not possible for the respondent company to deliver possession of the apartment to the complainant due to the circumstances now being explained by them, they should have returned the money of the complainant along with detailed intimation relating to force majeure conditions and admissible interest. The respondent however chose to keep the money of complainant for more than 12 years. It can be well understood that the complainant has been put through tremendous hardships. It was on account of these circumstances that the Authority during the 8th hearing on 19.01.2021 had observed as follows:

“On perusal of record, Authority observes that respondent vide order dated 02.12.2020 was directed to either file reply to show cause notice issued or else pay the amount of delayed interest as calculated by the Authority by today. However, no compliance has been made by the respondent and there seems no justifiable cause for non-payment of delayed interest as already ordered by the Authority. The Authority prima facie observes that respondent was under an obligation to hand over the possession of the plot by 2009. Already there is delay of approximately 12 years, but neither possession of the villa has been offered nor delay interest has been paid to the complainant. The amount of delay interest accrued till date will

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remain payable to the complainant whether order of refund or of possession is passed in favour of complainant. Said interest will remain admissible and will not be affected by any additional reply filed by the respondent. However, on request of respondent case is being adjourned to 03.02.2021 with a direction to the respondent to pay delay interest of ₹23,52,723/- to the complainant before the next date of hearing failing which the conduct of the respondent will be construed as deliberate disobedience of the orders of the Authority and the Authority will be constrained to issue arrest warrant against the Directors of the respondent company. Further, a show cause notice is issued to the respondent as to why a penalty of ₹25,000/- be not imposed upon him for non-complying with the orders of the Authority.”

(iv) The Authority in its orders dated 14.10.2020 has ordered payment of interest amounting to ₹23,52,723/- to the complainant in order to mitigate the hardships being faced for the last more than a decade. On 02.12.2020 the respondent company had failed to comply with the orders. The Authority vide its previous orders dated 02.12.2020 had decided to issue show cause notice as to why they shall not be sent to civil imprisonment for non-payment of amount in question under Order 21 Rule 38 of Code of Civil Procedure, 1908.

(v) In accordance with the logic explained in order dated 19.01.2021 the Authority is in the process of implementing its orders of insisting upon the respondent to make payment of delay interest amounting to ₹23,52,723/-. The arrest warrants in question which have been received un-served were issued by the Authority in the above explained context.

(vi) The plea of the respondent is that they have already paid an amount of ₹11,76,362/- (including the amount of demand draft today prepared) which is 50% of the total amount payable. The Authority decides to grant a short adjournment upto 15.04.2021 to enable the respondent to pay the remaining decreed amount along with penalty of ₹25,000/- and earlier imposed cost of ₹5,000/- to the



Authority and ₹2,000/- to the complainant before the next date of hearing failing which fresh arrest warrants against both the Directors will be issued.

6. Case is adjourned to 15.04.2021 with a direction to the respondent to deposit the above referred demand draft in the account of the complainant and pay remaining balance on next date, otherwise fresh warrants of arrest will be issued.”

8. It was also informed in hearing dated 30.03.2021 that respondent has already made payment of ₹11,76,362/- to the complainant and is ready to make remaining payment but sought time for the same. So, short adjournment was granted.

9. Complainant filed rejoinder on 06.08.2021 to additional reply filed by respondent wherein submissions made by respondent are denied in general. It has been specifically denied that revision was done in layout plan and letter dated March 2008 has ever been sent by respondent to complainant.

10. Thereafter, on 15.04.2021, learned counsel for the respondent informed the Authority that in compliance of order dated 04.10.2020, entire payment of delay interest of ₹23,52,723/- has already been made to the complainant on 14.04.2021. Now the issue which remained to be adjudicated was with regard to the possession of the villa in question. Respondent reiterated its stand that villa has come under road due to which respondent is not able to hand over the possession of the villa and will not be able to do so even in future as the land has been acquired by State Government and



requested that instead of possession, refund may be allowed. Therefore, in order to properly adjudicate the matter, Authority vide order dated 03.08.2021, directed the respondent to submit original sectoral plan revised sectoral plan of the project depicting therein that the villa allotted to the complainant has come under road and is now not available to be offered to her.

11. In compliance of order dated 03.08.2021, respondent submitted the sectoral plans in Court on 14.09.2021 and it was directed that to check the veracity of said plans, copy of same was to be forwarded to CTP of Authority, who after confirmation from the concerned department shall furnish his observations as to whether or not originally allotted villa no. A-644(renumbered as A-647) has come under road. Operative part of order dated 14.09.2021 is reproduced below for reference:

“4. It is observed that in order to ascertain the veracity of plans submitted by respondent today, a copy of above said plans shall be forwarded to learned CTP of Authority who will verify the same from concerned department and furnish his observations before Authority before next date of hearing as to whether or not originally allotted villa no. A-644(renumbered as A-647) has come under road.”

12. In compliance to above said order, CTP of the Authority submitted his report on 16.11.2021 wherein it has been informed that plot no. A-644 and A-647 are two different plots and plot no. A-644 has not been renumbered as A-647. It has been informed that while approving layout plan



of the project on 08.05.2006, 79 plots were freezed by DTCP and on 15.03.2010 all the plots were defreezed. However, on 26.05.2010, all the plots were freezed again and on 21.03.2013, 33 plots were released(except plot no. 635 to 654, 672 to 686 and 704-714). Meaning thereby allotment of plot no. A-644 made on 30.12.2006 was made when said plot was freezed and allotment of plt no. A-647 made on 07.03.2008 was also made when said plot was freezed by DTCP. It has been reported that both th allotments were made when the plots were freezed by Town and Country Planning Department.

13. Learned counsel for the respondent today stated that since respondent is not in a position to hand over the possession of the villa to the complainant as it has come under road, therefore refund of the amount deposited by complainant may be allowed and delay interest already paid to her may be adjusted in payment of refund amount with interest.

14. Authority has gone through the written and oral submissions made by both the parties and report submitted by CTP of the Authority and observes that respondent had allotted villa no. A-644 to the complainant when it was already freezed by DTCP on the date of allotment. Further, new allotted villa no. A-647 was also allotted from the freezed plots. Authority agrees that respondent by said act has committed fraud on the complainant from the beginning. However, since villa allotted to the complainant has come under road, there is no possibility that possession of the villa can be



offered to the complainant. In these circumstances, the only relief available to the complainant is refund of the amount deposited by her along with interest. Hence, Authority directs respondent to refund the complainant paid amount of ₹24,19,168/- 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 % from the date amounts were paid till today. Accordingly, total amount along with interest calculated at the rate of 9.30% works out to ₹56,78,587/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 02.02.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹5,00,000/-	18.09.2005	₹7,63,364/-	₹12,63,364/-
2.	₹4,20,000/-	03.08.2006	₹6,06,019/-	₹10,26,019/-
3.	₹14,99,168/-	18.07.2008	₹18,90,036/-	₹33,89,204/-
Total	₹24,19,168/-		₹32,59,419/-	₹56,78,587/-

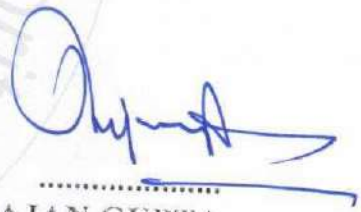
It is pertinent to mention here that an amount of ₹23,52,723/- has already been paid to the complainant as delay interest during the course of hearings. Therefore, net amount which remains payable to her after deducting ₹23,52,723/- from total amount payable is ₹33,25,864/- (₹56,78,587/- - ₹23,52,723/-).


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Respondent is directed to make the entire payment of ₹33,25,864/- within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017. Since, respondent has caused huge mental agony to the complainant and has retained the money for nearly 15 years being fully aware that the villa allotted to her no longer exists, Authority finds it a good case in which complainant deserves to be compensated. Accordingly, complainant is free to approach the court of learned adjudicating officer to award appropriate compensation to her.

Respondent is also directed to pay earlier imposed penalty of ₹25,000/- payable to the Authority and cost of ₹2,000/- payable to the complainant.

15. **Disposed of.** File be consigned to 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 SĪHAG
[MEMBER]