



9

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1355 OF 2020

Balkar Singh & Anr

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 1356 OF 2020

Sarla Devi & Balkar Singh

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 1357 OF 2020

Manju & Ram Naresh

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

4. COMPLAINT NO. 1358 OF 2020

Chaman Lal Hans & Veena Rani

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

5. COMPLAINT NO. 1359 OF 2020

Lakshman Ram & Raj Dulari

....COMPLAINANT(S)

VERSUS

4

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

6. COMPLAINT NO. 1361 OF 2020

Bimla Rani & Muni Lal

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

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7. COMPLAINT NO. 1363 OF 2020

Dharam Vir Nagpal & Vinod Bala Nagpal

....COMPLAINANT(S)

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M/S Parsvnath Developers Ltd.

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8. COMPLAINT NO. 1364 OF 2020

Bharat Bhushan

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

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9. COMPLAINT NO. 1365 OF 2020

Sunil Devi & Ranvir Singh

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M/S Parsvnath Developers Ltd.

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10. COMPLAINT NO. 1366 OF 2020

Vinod Kumar Hira & Loveleen Hira

....COMPLAINANT(S)

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9

22

11. COMPLAINT NO. 1367 OF 2020

Raj Kumari & Vijay SinghCOMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.RESPONDENT(S)

CORAM: **Rajan Gupta** **Chairman**
Dilbag Singh Sihag **Member**

Date of Hearing: 20.07.2022

Hearing: 5th

Present: - Mr. Amit, learned counsel for the complainant
Ms. Rupali S. Verma, learned counsel for the respondent
through video conference

ORDER (RAJAN GUPTA-CHAIRMAN)

Captioned bunch of complaints is being disposed of together. Complaint No.1355 of 2022 is being taken as lead case and facts of this complaint are being taken into consideration for disposal of the entire bunch.

2. Case of the complainant is that he was an Army officer in Indian Army. In the year 2009, he wanted to have a permanent place for his family in near future. Therefore, he filed an application dated 4.3.2009 for booking an

4

apartment in the project named 'Parvnath Palliwal City' of respondent situated in Panipat, Haryana and vide cheque dated 4.3.2009 paid 10% booking amount of Rs.1,46,400. Total consideration of the apartment was Rs.14,64,000. Receipt of the payment of earnest money has been annexed as Annexure C-3 with the complaint. Complainant further made payment of 3 more instalments upto 6.7.2012. Complainant has paid an amount of Rs.11,39,117 against total agreed consideration. Payment of the money by complainant is duly proved from a copy of ledger account furnished by respondent, which has been annexed with the complaint as Annexure C-4.

3. A flat-buyer agreement dated 16.11.2009 was executed according to which apartment was to be delivered within 24 months + 6 months. Accordingly, the due date of offering of possession was in early 2012.

4. As per averments of complainant, he heard nothing about progress of the project or of the apartment for next 7 years. Complainant kept approaching the respondents for early delivery of apartment but no satisfactory reply was ever given to them. Complainant along with another group of 20 persons had approached the respondents stating that they are waiting for their apartments for the last over 9 years, if the respondent delays it further, complainant will constraint to approach the court of law.

Complainant states that the respondent gave them an offer for fit out possession in August 2020. Respondent has offered them fit out possession

90

without completing the apartments and without obtaining occupation certification. Such possession could not have been offered.

5. Aggrieved on account of conduct of the respondents and inordinate delay of over 9 years having already been caused and apartment still not being ready, complainants have sought relief of refund of entire money paid by them along with interest. Complainants have further stated that if any delay was caused by complainants, respondents used to charge 24% interest on the delayed payment. Complainants have prayed that they should also be returned their money along with interest @ 24%.

6. Respondents in reply to the complaint, have essentially raised technical objections that complaint is time barred, RERA Act came into force in 2017, but the flat buyer agreement was executed in the year 2009, therefore, the complaints are not maintainable before this Authority. Further, fit-outs possession has already been offered to the complainants. This is an unregistered project. Therefore, jurisdiction of this Authority will not extend to such projects in terms of the law laid down by Hon'ble Supreme Court in Newtech Promoters Vs. State of U.P. and other (2021 SCC on-line SC 1044).

7. Respondents have admitted execution of flat buyer agreement as well as payment of Rs.11,39,117 having been received from complainants. Respondents however, have argued that complainants had defaulted in making

9

payments and reminder were issued to them for making payment in the year 2007-2019.

8. During the oral arguments, both parties put forward same arguments as had been submitted by them in their written pleadings.

9. Authority has gone through respective arguments put forward by both sides. It observes and orders as follows: -

i) Respondents have admitted basic facts of the matter that a flat-buyer agreement was executed in the year 2009. Against consideration of Rs. 14,64,000, an amount of R. 11,39,117 has already been paid which has been duly acknowledged by way of receipts as well as in their written statements. Further, in the flat-buyer agreement dated 6.11.2009 possession of the apartment was supposed to be delivered within 24+6 months, which means possession should have been delivered by March, 2012.

ii) Admittedly, occupation certificate of the project has still not been received i.e., even after 10 years from the due date of offering possession the project is not complete.

Respondent states that a fit-out possession was offered to the complainants in the year 2020. Authority observes that non-acceptance of a fit-out possession is optional for complainant. Complainant had contracted for



purchase of a completed apartment. An apartment is said to be complete only when it has received occupation certificate from the Authorities concerned and also it is complete in all respects as per provisions of agreement, is in habitable condition. Mere fact that occupation certificate has not been obtained is a proof enough that apartments are still not complete. Lead complainant was an Army officer. He retired in the year 2012. He booked his apartment in the year 2009. He made all payment as per demands and most of the payments have been made by the end of the year 2012. Legitimate expectations of the complainant, therefore, was that apartment would be delivered to them by the year 2012 or may be with some delay of say 1-2 years.

- iii) A proper legal offer of possession, however, has still not been made even after lapse of 10 years. Such inordinate delay tantamount to complete breach of agreement. Such huge delay defeats the very purpose of booking an apartment. A delay of 1-2 years in an under-construction project is understandable but delay of 10 years, even after obtaining major part of consideration, is nothing short of breach of contract and breach of trust. In fact, it amounts to defrauding the allottees. No reasonable cause for such huge delay has been presented.
- iv) On the contrary, respondents are still indulging in frivolous argument that complaint is barred by limitation, which they are very well aware that because for non-performance of their obligations, they cannot hold

9

complainants responsible. Respondents are even taking unfounded ground that the project is unregistered, therefore, the ratio of the judgment of Hon'ble Supreme Court in Newtech Promoters and Developers Ltd. Vs. State of U.P. and others (2021) would be applicable. Respondents have not even bothered to check fact because this project was registered with the Authority vide registration No. HRERA-PKL-PNP-120-2019 dated 02.03.2019.

v) For the foregoing reasons and observations, Authority has no hesitation in allowing the prayer of complainant for refund of entire amount paid by the complainants to the respondents. Respondents are directed to refund the money to the complainants along with interest as calculated in the table below:-

Sr no.	Complaint no.	Amount paid	Interest	Total
1.	1355/ 2020	₹ 11,39,117/-	₹ 12,42,053/-	₹ 23,81,170/-
2.	1357/2020	₹ 3,47,904/-	₹ 4,49,442/-	₹ 7,97,346/-
3.	1358/2020	₹ 13,07,710/-	₹ 12,88,912/-	₹ 25,96,622/-
4.	1361/2020	₹ 3,26,732/-	₹ 3,95,159/-	₹ 7,21,891/-
5.	1363/2020	₹ 5,61,220/-	₹ 7,10,908/-	₹ 12,72,128/-
6.	1364/2020	₹ 13,87,815/-	₹ 13,64,502/-	₹ 27,52,317/-
7.	1365/2020	₹ 3,05,000/-	₹ 3,65,150/-	₹ 6,70,150/-
8.	1366/2020	₹ 5,87,392/-	₹ 7,46,134/-	₹ 13,33,526/-

9.	1367/2020	₹ 3,62,400/-	₹ 5,82,084/-	₹ 9,44,484/-
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In complaint no. 1356 of 2020, learned counsel for respondent had submitted during the course of hearing, that respondent company has already refunded an amount of ₹ 3,47,900 /- out of total payment i.e., ₹ 5,21,690/- to the complainant through a cheque dated 15.04.2022, and the same has been admitted by the complainant. Therefore, respondents are directed to refund the remaining amount i.e., ₹ 1,73,790/- along with the interest which works out to ₹ 6,70,317/-.

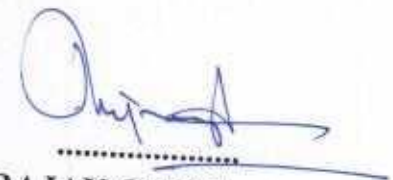
Further, in complaint no.1359 of 2020, complainant had claimed that he has deposited ₹10,64,961/- against total sale consideration price i.e., ₹ 13,60,910/-. To prove his payment, he has attached a copy of customer ledger dated attached as Annexure C-4 with the complaint wherein the amount paid by the complainant is shown as ₹ 9,40,740/-. Complainant has not attached any other proof of payments made by him. Therefore, on the basis of the evidence placed on record and in the absence of any other evidence, Authority observes that the amount paid by the complainant is ₹ 9,40,740/- not ₹ 10,64,961/-. Therefore, interest payable to the complainant shall be calculated on ₹ 9,40,740/- which works out to ₹ 10,37,532/-.

- vi) On the basis of facts and consideration of the matter, Authority is of the considered view that complainants also deserve to be compensated for the

15

harassment suffered by them. Authority would send a copy of this order to the learned Adjudicating Officer for issuing a notice to both the parties and allowing the complainants to file their claim for compensation if they so desire.

10. **Disposed of** in above terms. The file be consigned to record room after uploading the order on web portal of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]



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**CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar
Dilbag Singh Sihag**

**Member
Member
Member**

Date of Hearing: 28.09.2022

Hearing: 6th

Present: - Mr. Sandeep Lather, learned counsel for the complainant through video conference
Ms. Rupali S. Verma, learned counsel for the respondent through video conference

ORDER (DILBAG SINGH SIHAG - MEMBER)

Captioned bunch of complaints has been disposed of together vide order dated 20.07.2022.

2. An application has been filed by Mr. Sandeep Lather, learned counsel for complainant stating therein that he had attended the court on 20.07.2022 through video conferencing but his presence has not been recorded in the order 20.07.2022.

A perusal of the attendance sheet shows that Mr. Sandeep Lather, learned counsel for complainant had attended the hearing on 20.07.2022. Due to

Complaint no.1355, 1356,1357,1358,1359,1361,1363,1364,1365,1366,1367 of 2020

inadvertence, his presence could not be recorded. So, presence of Mr. Sandeep Lather Advocate be recorded in the order which is supplemented to the earlier order dated 20.07.2022.

This order may be uploaded in the continuation of the order dated 20.07.2022.



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Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]



.....
DILBAG SINGH SIHAG
[MEMBER]

