



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 270 OF 2022

Arjan Dev Arya

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 326 OF 2022

Savita Wadhwa

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 336 OF 2022

Bindu Mehta

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Dilbag Singh Sihag

Member

Date of Hearing: 29.09.2022

Hearing: 2nd (in all complaints)

Present: - Mr. Sushil Malhotra, learned counsel for the complainants through video conference

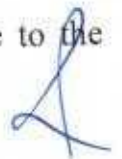
Ms. Rupali S. Verma, learned counsel for the respondent through video conference

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. Captioned complaints are taken up together as grievances and relief sought by the complainant allottees are identical and relate to same project of the respondent. Therefore, complaint case no. 270 of 2022 has been taken as lead case.

2. Main facts are summarised in following paras:

(i) Complainant booked a plot bearing no. D-123 measuring 300 sq. yards in a project named 'Parsvnath City, Rohtak' on 27.10.2009. Basic sale price of plot was ₹15,51,375/-. Complainant had paid an amount of ₹22,35,939/- to the respondent by the year of 2011. No builder buyer agreement has been executed between the parties till date. Complainant has alleged that respondent had assured at the time booking that complainant would get possession by December 2011. Complainant regularly visited respondent for possession of his unit but without any success and got only false assurances by the company. It is further alleged that after lapse of approximately 11 years from the date of booking, offer of possession of a new plot bearing no. D-108 admeasuring 299 sq. yards was made to the



complainant vide letter dated 30.06.2020 in lieu of old plot no. D-123 having area of 300 sq. yards along with final statement of accounts. Copy of said offer of possession along with final statement of accounts is annexed with complaint as Annexure C-3.

(ii) It has also been averred that no infrastructure like electricity, sewerage, road and potable water connection has been provided by the respondent at site. Furthermore, respondent has not incorporated interest for the period of delay in offering of possession in the final statement of accounts issued by respondent along with letter of offer of possession. Complainant has alleged that while offering possession, respondent has also charged GST from the complainant without any justification as GST would have not been paid by the complainant had possession been given on time. Therefore, present complaint has been filed seeking possession of the plot supported by mandated infrastructure apart from payment of delay interest and quash the final statement of accounts issued by respondent.

3. In nutshell, learned counsel for complainants argued that offer of possession made on 30.06.2020 was merely a symbolic offer of possession as such offer was not a valid offer of possession in the absence of infrastructural deficiencies at site as reported by Local Commissioner in his report dated 18.10.2021 submitted in complaint case no. 1253 of 2020. But even if said offer of possession is presumed as valid, there has been delay of several years and respondent is liable to pay delay interest for the same as

per Rule 15 of HRERA Rules, 2017 being followed by the Authority in rest of the cases. He prayed that since there has been delay of more than 11 years from the date of booking, respondent may be directed to pay interest for delay to the complainant allottees in handing over the possession.

4. Respondent filed his reply on 20.07.2022 contending that complainant was allotted plot bearing no. D-123 admeasuring 300 sq. yards in project namely 'Parsvnath City, Rohtak' on 08.06.2010. Basic sale price of the plot was fixed at ₹15,51,375/-. Complainant has made payment of ₹24,00,938/- till date. Respondent has annexed copy of customer ledger dated 29.03.2022 as Annexure R-5 which depicts that a sum of ₹24,00,938.69/- has been paid by the complainant. It has been submitted that on 22.03.2012 and 11.12.2012 respondent sent letter to complainant along with two copies of allotment letter/plot buyer agreement for signing the same with a request to return it to the respondent along with his latest photograph. However, complainant neither responded to the letter nor returned the letter. Respondent has further stated that due to modifications and approvals of revised layout plan by competent Authority, DTCP, Haryana, plot initially allotted to complainant was changed from D-123 to D-108 and offer of possession of new plot was given to the complainant on 30.06.2020. Respondent has also submitted that delay caused in handing over of possession was not intentional rather due to reasons beyond his control. Respondent has also placed following submissions vide their said reply:



- (i) Respondent promoter applied for grant of license to develop a plotted colony over land measuring 118.188 acres in Sector-33 and 33A, Rohtak vide application dated 22.06.2006 and application dated 07.05.2007. Against said applications, license no. 36 of 2010 dated 07.05.2010 was granted which was valid upto 06.05.2014.
- (ii) A land acquisition process was initiated by State Government on 13.02.2008 with the issuance of notification under Section 4 of the Land Acquisition Act, 1894 vide which some portion of this licensed colony was also proposed to be acquired for HSIIDC. Land owning company filed objections under Section 5A but without giving opportunity of hearing, notification under Section 6 was issued on 13.12.2008. Land was acquired vide two separate awards dated 13.07.2009 and 17.08.2009. The Government of Haryana has a land release policy date 22.10.2007 and respondent promoter/land owning companies were expecting release of land under said policy.
- (iii) Consequently, on 24.01.2011, DTCP, Haryana issued a show cause notice/provided opportunity of hearing before delicensing of land measuring 14.15 acres.
- (iv) A Civil Writ Petition No. 6196 of dated 02.04.2012 was also filed in respect of the acquisition by the respondent-promoter which was dismissed on account of delay and laches.

(v) Since, 14.15 acres land could not be released, same was de-licensed vide Town & Country Planning Department on 31.10.2014 out of total licensed area measuring 118.188 acres.

(vi) Now after de-licensing of 14.15 acres, total project area reduced to 104.038 acres. On 08.01.2015, respondent-promoter submitted revised layout plan of the reduced colony. Since their license was valid upto 06.05.2014, they also applied for its renewal on 07.10.2015, 29.09.2017 and 22.04.2019. On 19.06.2018 their pending application for approval of revised lay out plan and renewal of the license were considered by the department, and on 23.12.2019 a revised layout plan was approved followed by approval of zoning plan dated 28.02.2020 and demarcation plan dated 17.03.2020. They could not commence the process of offering possession to the allottees for three months due to outbreak of Covid-19 which they did on 30.06.2020 after ease of COVID restrictions.

(vii) It has been further averred that 300 conveyance deeds have already been executed and 500 allottees have settled their accounts.

Respondent has further submitted that development works namely: potable water line, sewer line, storm line, drainage, road network, street lights have been developed. Project has a temporary electricity connection. Internal development works were completed by 2012-2013 and basic infrastructure has already been developed at site. Respondent, therefore,

claimed that due to force majeure conditions, delay has been caused in handing over possession. It has also been contended that complainant has been trying to avoid taking over of possession. Hence, respondent company is entitled for holding charges. It has also been contended that respondent has not charged any escalated cost of the plot from the complainant as has offered the possession @₹5,171.25/- per sq. yards whereas present market value of same plot is ₹35,000-40,000/- per sq. yard excluding EDC and IDC.

5. Learned counsel for the respondent argued that respondent is not liable to pay delay interest to the complainants as delay in handing over possession is due to delay in renewal of license by the DTCP and non-approval of revised layout plan which was pending with the Authority since 2014. She further argued that respondent has offered possession to the complainants under guidance of this Authority. It was never directed by the Authority to give delay interest to the complainants and therefore, delay interest was not incorporated in final statement of accounts issued by respondent along with offer of possession made on 30.06.2020. She also argued that in case, Authority is of the opinion that delay interest has to be paid to the complainants, it shall be awarded only till 30.06.2020 i.e. the date on which offer of possession was made to the complainants and for the purpose of calculating delay interest, amount received by respondent towards EDC, IDC and service taxes etc shall not be included. Lastly, she also argued that allegations of complainants that infrastructure facilities are not available,

are not tenable since internal development works are complete and basic infrastructure has already been developed at site since 2013.

6. After hearing both parties and going through documents placed on record, Authority observes and orders as under:

(i) Plea of force majeure taken by the respondent has already been declined in bunch of cases with lead case no. 1253 of 2020 titled Naresh Kumari versus M/s Parsvnath Developers Ltd. vide its order dated 30.11.2021 whereby it has been held that complainants are entitled to delay interest on the amounts paid by them from the due date of offering possession upto the actual date of offer of possession. Relevant portion of order dated 30.11.2021 is reproduced below for reference:

"9 (viii) In the face of aforesaid facts and circumstances Authority is unable to accept the arguments of respondent-promoter that they should be given benefit of force majeure conditions because it was on account of delay caused by Town & Country Planning Department that their revised lay out plan were not approved and accordingly offer of possession could not be made to the allottees. This argument squarely stands refuted in the face of facts narrated above.

10. On account of aforesaid findings, Authority would consider it just and appropriate that complainants are entitled to interest on the amount paid by them from the due date of offering possession upto the actual date of offer of possession."

Authority reiterates its decision taken in above said case, while declining the plea of force majeure taken by the respondent in respect of delay caused in offering possession. Hence, complainants are

entitled to interest on the amounts paid by them from deemed date of possession till the date of valid offer of possession 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 10% (8.00% + 2.00%).

(ii) Respondent had offered possession of the plot to the complainants on 30.06.2020. At that time, provisions of RERA Act were applicable. Hence respondent was liable to pay delay interest to the complainant. The same be incorporated as an amount of delay interest in the final statement of accounts issued by the respondent. Since, respondent did not incorporate delay interest in its final statement of accounts as per Rule 15 of HRERA Rules, 2017, said offer can't be said to be a valid offer of possession. Therefore, complainants will be entitled for delay interest till fresh legal offer of possession is to be made to the complainants with fresh statement of accounts of receivable and payable amounts mentioning exact amount of delay interest payable to the complainants as per Rule 15 of HRERA Rules, 2017.

(iii) Plot buyer agreements have not been executed between the parties. So, deemed date of possession for the purpose of calculating delay interest can be reckoned as three years from the date of booking

(first payment) made by the complainants, as such principle has been followed by the Authority considering three years' time as adequate time to develop infrastructure at site before offering booked properties to his allottees. Accordingly deemed date of possession in captioned complaints is as follows:

S.No.	Complaint No.	Date of booking	Deemed date of possession
1.	270 of 2022	27.10.2009	26.10.2012
2.	326 of 2022	30.08.2011	29.08.2014
3.	336 of 2022	22.09.2009	21.09.2012

(iv) As far as issue of GST being charged by respondent is concerned, it is observed that the Government of India introduced GST in the year 2017. Since the deemed date of possession in these cases was prior to coming into force of GST, respondent has no justification in demanding GST charges from the complainant. Said amount is not payable by the complainants.

(v) It is further observed that amount of EDC/IDC, VAT, services tax which has been collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned departments, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will

himself be liable to bear the burden of interest. A builder is, therefore, not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned.

7. It is also pertinent to mention here that in all the complaints amounts mentioned by respective complainants as being paid to respondent differ from the amounts mentioned by respondent. Perusal of customer ledgers attached by both parties reveal that, customer ledgers attached by complainants are of the year 2020 and customer ledgers attached by respondent are of the year 2022. Meaning thereby amounts paid by complainants from 2020 to 2022 are not mentioned in the ledgers attached by the complainants with their complaints files. Accordingly, Authority presumes that customer ledgers attached by respondent are latest and correct and calculations of delay interest are being carried out on basis of said customer ledgers.

8. Authority has got calculated interest payable to the complainants and accordingly amount of upfront delay interest payable to these complainants calculated as per Rule 15 of HRERA Rules, 2017 which as on date works out to 10% (8.00% +2.00%) from deemed date of possession till date and further monthly interest payable to complainants till fresh offer of possession is made to the complainants is depicted in table below:



S.No.	Complaint no.	Amounts paid by complainants minus EDC, IDC	UPFRONT INTEREST CALCULATED TILL 29.09.2022	FURTHER MONTHLY INTEREST
1.	270 of 2022	₹15,07,199.69/-	₹14,97,289/-	₹12,388/-
2.	326 of 2022	₹5,07,085.80/-	₹4,10,392/-	₹4,168/-
3.	336 of 2020	₹14,79,236.06	₹14,83,694/-	₹12,158/-

Respondent is accordingly directed to make fresh offer of possession along with fresh statement of accounts of all receivable and payable amounts with regard to new plot offered to complainants; specifically incorporating therein the delay interest so calculated by this Authority and shall not charge GST from the complainants within 90 days of uploading of this order.

9. Complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.

सत्यमेव जयते

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DR. GEETA RATHEE SINGH
[MEMBER]

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NADIM AKHTAR
[MEMBER]

.....
DILBAG SINGH SHAG
[MEMBER]