



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### 1. COMPLAINT NO. 1207 OF 2020

Ramesh Malik & Anr.

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

### 2. COMPLAINT NO. 1208 OF 2020

Ramesh Malik

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Dilbag Singh Sihag**

**Member**  
**Member**

**Date of Hearing:** 14.10.2022

**Hearing:** 9<sup>th</sup>

**Present: -**

Mr. Ramesh Malik, learned counsel for the complainants  
(in both complaints)

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

**ORDER (DILBAG SINGH SIHAG - MEMBER)**

1. Captions 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. 1207 of 2020 has been taken as lead case.
2. Main facts are summarised in following paras:
  - (i) Complainants booked plot bearing no. C-257 measuring 425 sq. yards in a project named 'Parsvnath City, Rohtak' on 26.09.2009. Total consideration of plot was ₹31,97,700.01/-. Complainants had paid an amount of ₹12,75,000/- to the respondent by the year 2011. Builder buyer agreement was executed between the parties on 14.12.2012 and as per clause 8(a) of said agreement, respondent was under an obligation to hand over possession of the plot within a period of 24 months i.e. by 13.12.2014. Complainants have alleged that respondent did not give possession of the plot by stipulated date of 13.12.2014 despite making payment of substantial amount of ₹12,75,000/- to respondent. Besides, respondent had charged EDC/IDC from the complainant but same had not been deposited by the respondent with the Government, meaning thereby complainants are a victim of fraud committed by respondent. Moreover, plot allotted to him did not belong to the respondent, rather the land on which plot C-257 was shown to be carved out in the map was under the ownership of HSIIDC and a litigation by way of





CWP no. 6196 of 2012 was going on between the subsidiary company of respondent promoter and State of Haryana. Admittedly respondent's claim of said land was dismissed on 02.04.2012. As a result land stood transferred to HSIIDC. Therefore, complainant stopped paying further installments and made representations many a times to local office of the respondent company at Rohtak which did not yield any result. Ultimately complainant made payment of amount on the demand of respondents. Due to litigation with HSIIDC, respondent has lost about 15 acres of land of their share. 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. C-137 admeasuring 299 sq. yards was made to the complainants vide letter dated 14.07.2020 in lieu of old plot no. C-257 having area of 425 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 P-6 and P-7.

(ii) It has also been submitted that no infrastructure has been provided by the respondent at site. There is no availability of electricity, sewerage, road and potable water connection. 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. Respondent has also charged GST from the complainants and the same is not payable on the ground that had possession been given on time, then GST would have not been paid by the complainants. Therefore,



present complaint has been filed seeking possession of the plot supported by mandated infrastructure apart from payment of delay interest and compensation for decrease in size of plot and direction to respondent not to charge GST.

3. Learned counsel for complainants argued that the offer of possession made on 30.06.2020 was merely a symbolic offer of possession and 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 further argued that facts of present case are similar to complaint case no. 309 of 2021 titled as Baljeet Malik versus M/s Parsvnath Developers Ltd. which has been decided by the Authority on 16.08.2022, and requested that present case may be disposed of in terms of said order. Relevant part of said order dated 16.08.2022 is reproduced below for ready reference:

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

*(i) The plea of force majeure taken by 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. Authority reiterates its decision taken in above said case, and declines to agree with the plea of force majeure taken by respondent in respect of delay caused in offering possession. Hence, complainant is entitled to interest on the amount paid by him from deemed date of possession till the date of 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 complainant on 30.06.2020. At that time, provisions of RERA Act were applicable and hence respondent was liable to pay delay interest to the complainant and incorporate the amount of delay interest in the final statement of accounts issued to the respondent. Since, respondent did not incorporate the delay interest in its final statement of accounts, said offer can't be said to be a valid offer of possession. However, contention of respondent for not incorporating delay interest is that delay has been caused due to force majeure conditions and he is not liable to pay interest for the delay caused in offering possession. Said argument has already been declined in preceding para and learned counsel for the complainant has agreed that delay interest be given to complainant till 30.06.2020, therefore respondent is directed to pay complainant delay interest till the date of offer of possession made by him i.e. 30.06.2020.

(iii)\*\*\*

(iv) In regard to issue of GST being charged by respondent it is observed that the Government introduced GST in the year 2017. Since the deemed date of possession in this case was prior to coming into force of GST, respondent is not justified in demanding GST charges from the complainant. Said amount is not payable by complainant.

(v)\*\*\*

6. Authority has got calculated the interest payable to complainant and accordingly amount of delay interest payable to complainant 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 28.05.2015 till 30.06.2020 on sum of ₹34,95,553/- works out to ₹17,82,253/-. Respondent is accordingly directed to issue fresh statement of accounts of new plot incorporating therein the delay interest so calculated by this Authority and shall not charge GST from the complainants."*

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 12.02.2021 contending that on 08.06.2010 Mrs. Santosh was allotted plot bearing no. C-257 admeasuring 425 sq. yards in the project namely 'Parsvnath City, Rohtak'. Thereafter said plot was transferred in favour of present complainants on 19.08.2010. It has been alleged that complainants defaulted repeatedly in making timely payments. Complainants were informed about non-payments through various reminders from August 2010 to January 2020. Respondent has further stated that due to modifications and approvals of revised layout plan by competent Authority of DTCP, Haryana. Plot initially allotted to the complainant was changed from C-257 to C-137 and offer of possession of new plot was given to the complainant on 14.07.2020. Respondent has also alleged that delay caused in handing over possession was not intentional rather due to reasons beyond his control. With regard to reasons for delay and status of the project respondent has submitted as follows:

*L*



- (i) Respondent promoter acquired land admeasuring 118.188 acres in Village Bohar, Rohtak and respondent obtained license no. 36 of 2010 dated 07.05.2010 from DTCP, Haryana for promotion and development of residential plotted colony.
- (ii) Respondent has already applied before competent authority for renewal of said license with required fee from 07.05.2014 till 06.05.2020 which is still pending before competent authority.
- (iii) On 07.11.2014, DTCP de-licensed an area admeasuring 14.15 acres as said land was acquired by HSIDC, Haryana. As a result respondent was forced for filing application for renewal of said license for area admeasuring 104.038 acres on 07.10.2015 and submitted its revised layout plan and demarcation cum zoning plan accordingly.
- (iv) Respondent has applied for registration of said project under RERA Act, 2016 and proceedings have been going on for registration. It has also been submitted that issues pending with DTCP regarding said project have been resolved to some extent since revised layout plan and demarcation cum zoning plan have been approved.

Respondent has further submitted that respondent has already developed basic infrastructure and internal development works at project site. Respondent, therefore, claimed that due to force majeure conditions delay has been caused in handing over possession.



5. Learned counsel for 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 14.07.2020. 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 14.07.2020 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 is satisfied that the issues and controversies involved in present complaints are of similar nature as in Complaint no. 309 of 2021 titled as Baljeet Malik Vs. M/s Parsvnath Developers Ltd. Therefore,





captioned complaint is being disposed of in terms of the order passed by Authority in Complaint no. 309 of 2021.

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. Complainants have not annexed copies of receipts of payments made by them but have annexed respective customer ledgers dated 31.05.2020 issued by the respondent. Authority got calculated interest payable to the complainants based on said customer ledgers and accordingly amount of delay interest payable to 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 of offer of possession is depicted in table below:



S.No.	Complaint no.	Amounts paid by complainants minus EDC, IDC	Date of builder buyer agreement/ Deemed date of possession	Date of offer of possession	DELAY INTEREST PAYABLE TO COMPLAINANTS
1.	1207 of 2022	₹8,59,158.75/-	14.12.2012/ 13.12.2014	14.07.2020	₹4,80,423/-
2.	1208 of 2022	₹4,98,314.97/-	14.12.2012/ 13.12.2014	30.06.2020	₹2,76,735/-

Respondent is accordingly directed to issue fresh statement of accounts of all receivable and payable amounts while offering possession of new plots to the complainants; specifically incorporating therein delay interest so calculated by this Authority and shall not charge GST from the complainants. Said statement of accounts shall be issued by the respondent within fifteen days from date of uploading of this order.

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

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DR. GEETA RATHEE SINGH  
[MEMBER]

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DILBAG SINGH SIHAG  
[MEMBER]