



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1301 OF 2021

Surinder Arora

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Nadim Akhtar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 27.10.2022

Hearing: 4th

Present: - Mr. Tarun Singhal, 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)

While perusing the file, it is revealed that complainant had derived his rights through Mrs. Kamlesh Devi who had booked a residential plot in the project named "Parsvnath City Karnal" on 09.04.2011 and paid ₹3,02,400/- as booking amount vide receipt no. RT200240. A copy of booking amount receipt is annexed as Annexure C-1 colly. Complainant alleged that he entered into an

agreement with the respondent company to purchase a plot no.C-362 in block C admeasuring 299 sq. Yards in the project of respondent. Basic sale price of the said plot was agreed to be ₹20,09,280/-. Complainant has paid Rs 24,30,600/- till 30.05.2015. Copies of receipts of payment made by complainant has been annexed as Annexure R-2 colly.

2. It has been further alleged that the respondent without entering into the agreement to sale demanded and received all the money, which is against the provisions of the RERA Act. Complainant has further alleged that as per clause 10(a) and (b) of Plot- Buyer Agreement, possession was to be delivered within 24 months from the date of signing of the agreement. But it has been ten years since complainant had booked a plot under the respondent project but still possession of the plot has not been handed over to him till date. He kept approaching the respondents for the possession of the said plot but no satisfactory reply was ever given to him. Even after delay of over ten years, respondent sent offer of possession dated 17.07.2021 to the complainant in which they asked for money from the complainant. A copy of offer of possession is annexed as Annexure C-4.

Aggrieved on the same, on 09.09.2021, complainant sent a legal notice to the respondent company for giving rightful possession of the plot with 15 days' time to reply but no answer has been given to the complainant till date. A copy of registered post of the legal notice has been annexed as Annexure C-5.

Therefore, due to an inordinate delay of over ten years in handing over physical possession of the plot and aggrieved on the conduct of the respondent, complainant has filed the present complaint seeking relief of possession of plot along with delay interest at the rate of 11% from the date of delay caused till to the date of actual handing over the possession to the complainant.

3. Respondent filed his reply 28.02.2022. Respondent stated that complaint is not maintainable for the reason that on 17.07.2021, the complainant has already been offered possession of his unit. A copy of offer of possession dated 17.07.2021 is annexed as Annexure R-1. Plot no.C-362 admeasuring 299 sq. yards was allotted to him in February 2014 in the project of the respondent provisionally. He further submitted that vide letter dated 05.11.2015 and 27.07.2017, respondent had sent two copies of Plot Buyer Agreement containing various details/specifications of the unit to the complainant for his signatures. But complainant has never responded to those letters sent by the respondent. A copy of reminder letters dated 05.11.2015 and 27.07.2017 along with their receipts are annexed as Annexure R-2 and Annexure R-3 Colly. Respondent has admitted payment of ₹24,31,100/- till date. Respondent has called complainant a chronic defaulter despite issuance of reminder letters from 2014 to 2017. Copies of reminder letters are annexed as Annexure R-4(colly). Respondent has further submitted that due to pending revision of layout plan, non-renewal of license and certain other force majeure conditions, they were not able to offer possession to

the complainant. However, colony has been developed and all necessary facilities are available except sewerage treatment and permanent electricity connections

4. Today, learned counsel for the complainant requested for the possession of the plot along with the delay interest given from the deemed date of possession till the date of offer of possession.

5. Learned counsel for the respondent, on the other hand has reiterated the same facts as have been stated in his reply and submitted that offer of possession has already been made to the complainant on 17.07.2021. However, she argued that delay interest shall be awarded till 17.07.2021 i.e., the date on which the offer of possession was made to complainant and for the purpose of calculating delay interest, amount received by respondent towards EDC, IDC and service taxes etc shall not be included.

6. In view of above submissions and averments made by the parties, it is observed that admittedly offer of possession was made to complainant on 17.07.2021 along with final statement of accounts. However, Authority is aware of the fact that project of the respondent "Parsvnath City Karnal" in which the complainant has booked a plot is not entirely complete. So, in order to ascertain the availability of basic infrastructure facilities, Authority in complaint no. 1362 of 2020 titled as Neelam Rani Vs M/s Parsvnath Developers ltd relating to the same project of the respondent, vide its order dated 07.04.2022, has appointed Chief town and Country Planning as a Local Commissioner for the site inspection



and directed to submit the status report of the project of respondent. In compliance with the said order, site report was placed on record before Authority on 10.08.2022. On perusal of site report, it is revealed that water supply, sewer and storm water are laid at site but electricity poles are yet to be installed at the site. Therefore, Authority observes that since there are no proper installations of electricity poles in the colony, the colony cannot be said to be complete. Therefore, the said offer of possession dated 17.07.2021 made to the complainant is invalid. Authority is of view that the respondent shall issue a fresh offer of possession after ensuring supply of electricity. Hence, Authority further directs the respondent to issue the fresh offer of possession within 45 days along with fresh statement of accounts incorporating therein delay interest accrued for delay in handing over the possession.

It is pertinent to mention here that PBA attached by the complainant has not signed by any of the parties. It cannot be said that PBA was duly executed between parties, so for the purpose of calculating delay interest, deemed date of possession shall be reckoned as 3 years from the date of booking (first payment) made by the complainants. Accordingly, deemed date of possession in complaint is 09.04.2014.

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. Authority has got calculated delay interest from deemed date of possession i.e., 09.04.2014 till the date of passing the order i.e., 27.10.2022 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 10.25% (8.25%+2.00%).

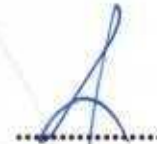
Accordingly, delay interest which has got calculated by the Accounts Branch of the Authority works out to ₹ 15,86,502 /- except EDC & IDC charges.

If respondent fails to handover the possession within 45 days, then he will be liable to pay further monthly interest to the complainant till actual handing over of possession which works out to ₹15,743 /- per month.

8. **Disposed of.** Files be consigned to record room after uploading of this order on the website.



.....
NADIM AKHTAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]

