



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 565 OF 2022

Kanta Rani & Anr

....COMPLAINANT(S)

VERSUS

Haryana Shri Vikas Pradhikaran

...RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 07.12.2022

Hearing: 4th

Present: - Mr. Gaurav Gupta, learned counsel for the complainant
through video conference
Mr. Sikander Bakshi, learned counsel for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaints dated 13.06.2022 have been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and

Dr. Geeta Rathee

Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

3. Succinct facts of the case as per pleading and annexures are as under:

S.N.	Particulars	Details
1.	Name of the project	Haryana Shari Vikas Pradhikaran
2.	Nature of the Project	Residential site/building
3.	RERA Registered/not registered	Un-registered
5.	Unit no.	1492
6.	Unit area admeasuring	206.53 sq.mtr/10 Marla
7.	Allotment letter	04.05.2021
	Possession Clause	Clause 5 of Allotment letter dated 04.05.2021 <i>In case the possession of the plot/building is not delivered by HSVP within 30 days after receipt of the application, HSVP will be liable to pay interest @5.5% on the amount deposited by you till the date of delivery of possession, however such interest shall be payable for the period calculated after expiry of 30 days as aforesaid and till date of offer of possession.</i>
8.	Due date of possession	18.07.2021

2 *Ratner*

		(Note: 30 days from the receipt of application for taking possession i.e. 18.06.2021)
9.	Total Sale Consideration	1,90,57,400/-
10.	Amount paid by the complainants	1,90,57,400/-
11.	Offer of Possession	21.01.2022
12.	Delay in handing over of possession from the date of receipt of application till offer of possession	6 months, 3 days

FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

3. That complainant had bid for residential plot in the project of the respondent for residential building no. 1492 in Sector-11, Urban Estate, Panchkula of plot admeasuring 206.53 sq. meter and letter of intent dated 30.12.2020 was issued to the complainant. Copy of letter of intent dated 30.12.2020 is annexed as Annexure C-1. The total sale of price of the plot was ₹1,90,57,400/- and as per the terms of letter of intent, the

Rattree

complainant made the full and final consideration towards the plot within specified period.

4. That on 04.05.2021, respondent has issued allotment letter to the complainant and duly acknowledged the full and final payment towards the booked plot. Copy of allotment letter is annexed as Annexure C-2.
5. That as per clause '5' of the allotment letter dated 04.05.2021, the respondent had to deliver the possession of the plot to the complainant within 30 days of the receipt of the application for taking possession. Respondent had offered the possession of the plot to the complainant vide letter dated 04.05.2021. A copy of possession letter dated 04.05.2021 is annexed as Annexure C-3. After receiving the possession letter, complainant has approached the respondent on 18.06.2021 for taking the physical possession of their plot after compliance of all the conditions of the allotment letter. Same application was accepted by the respondent on 18.06.2021. Copy of application receipt dated 18.06.2021 is annexed as Annexure C-4. But respondent has failed to deliver the physical possession of the plot within 30 days from the date of acceptance of application dated 18.06.2021.
6. That to complainants' utter shock and surprise, respondent informed the complainants that there is no road connectivity, sewerage and water connection in their respective plots. Consequently, complainant wrote

Rathee

number of emails requesting the respondent to develop the site and to deliver the possession of the plot, however, respondent did not develop the site. The complainants feeling harassed, had also served legal notice dated 08.07.2021 to the respondent for physical delivery of possession, execution of the conveyance deed and payment of delayed period interest to the complainant. A copy of legal notice dated 08.07.2021 and emails are annexed as Annexure C-5.

7. That respondent asked the complainant to take physical possession of the undeveloped plot and also compelled the complainants to give an undertaking that they are ready to take the possession without development work and complainants who was in dare need of possession of the plot has given an undertaking under compulsion that he will not claim compensation on account of non- completion of development work. Copy of undertaking dated 07.01.2022 is annexed as Annexure C-6. Subsequently, on 21.10.2022, respondent had delivered the possession of the plot to the complainant, but respondent has paid nothing on account of delayed period interest which they had assured. A copy of possession letter is annexed as Annexure C-7.
8. That aggrieved from the above facts and circumstances, present complaint has been filed.

Rathee

RELIEF SOUGHT

9. The complainant in his complaint has sought relief to pay delay interest to the complainant on account of delay in handing over of possession of plot.
10. The Authority issued a notice dated 12.04.2022 of the complaint to respondent by speed post. The delivery reports have been placed in the file. but since the last two hearings, respondent has preferred neither to put in appearance and nor file reply to the complaint. Vide order dated 11.10.2022, respondent was given last opportunity to appear before the Authority and file reply failing which its defence will be struck off on the next date of hearing. But reply has not been filed till date. Therefore, Authority decides to strike off their defence and proceed the case ex-parte.

JURISDICTION OF THE AUTHORITY

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

6 Katree

I. Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

II. Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

(4) The promoter shall— (a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

34. Functions of Authority.—The functions of the Authority shall include—(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

So, in view of the Provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside

Rathee

compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

ISSUES FOR ADJUDICATION

11. Whether the developer has delayed in delivering the possession of Plot in terms of allotment letter and is liable to be proceeded under the provisions of Real Estate (Regulation and Development) Act, 2016.
12. Whether the complainants are entitled for interest on the amount paid as per section 2(z) of the Real Estate Regulatory Authority?

OBSERVATIONS AND DECISION OF THE AUTHORITY

13. In light of the background of the matter, Authority observes as follows:
 - i) That allotment was made to the complainant on 04.05.2021 and against the total sale price of the plot i.e., ₹19,05,7400/-, complainant has made full and final consideration within specified period which has been duly acknowledged by allotment letter annexed in complaint.
 - ii) That as per clause '5' of the allotment letter dated 04.05.2021, the respondent had to deliver the possession of the plot to the complainant within 30 days of the receipt of the application for taking possession. Offer of possession was made to the complainant vide letter dated 04.05.2021. Pursuantly, the complainant after receiving the offer of


R. Attree

possession approached the respondent on 18.06.2021 for the physical possession of the plot and the same was accepted by respondent vide application receipt dated 18.06.2021 which means physical possession should have been delivered by July 2021. But respondent has delivered the physical possession of the plot to the complainant on 21.01.2022 without paying anything on account of delay period interest.

iii) That as per the section 18 of the RERA Act, 2016 and Rule 15 of the HRERA Rules, 2017, if the respondent promoter fails to deliver the possession in accordance with the terms of the agreement for sale, then he is liable to pay the delay interest for every month of delay till the handing over of the possession.

iv) Therefore, as per the mandate of law, prayer of the complainant is justified and he is entitled for the delay interest for the period of delay in handing over the possession i.e. from 18.07.2021 (deemed date of possession) upto to 21.10.2022 (date of delivery of the actual possession of the plot).

v) Hence, Authority directs the respondent to pay to the complainant delay interest from the deemed date of possession i.e., 18.07.2021 till passing of the order i.e., 07.12.2022 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


G. Rattner

as on date works out to 10.35 % (8.35%+2.00%). Accordingly, delay interest which has got calculated by the Accounts Branch of the Authority works out to ₹ 2,74,521/-.

14. Respondent is directed to make payment of ₹ 2,74,521/- to the complainant within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation and Development) Rules, 2017.
15. **Disposed of.** Files be consigned to record room after uploading of this order on the website.




.....
Dr. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]