



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 241 OF 2020

Ankita Sahni & Puneet Sahni

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 22.03.2023

Hearing: 4th (re-opened)

Present: - Mr. Akshat Mittal, counsel for the complainant through
Ms. Rupali S. Verma, counsel for the respondent

ORDER (Dr. GEETA RATHEE SINGH- MEMBER)

1. Captioned complaint was disposed of by the Authority vide order dated 30.03.2022, granting relief of refund of the amount deposited by complainant along with interest which worked out to ₹27,02,706/-. Relevant part of order dated 30.03.2022 is reproduced below for reference:

“4. After hearing the contentions of both the parties and going through documents placed on record, Authority

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observes that complainants have claimed that they have paid to the respondent a sum of ₹10,34,750/- till the date of execution of builder buyer agreement and a sum of ₹4,74,793/- thereafter, totalling ₹15,09,543/-. Complainants have referred to page 6 of builder buyer agreement wherein it has been agreed between the parties that complainants have made payment of ₹10,34,750/-. Complainants states that the amount mentioned in the BBA should be taken as correct. Respondent on the other hand states that complainants have only paid a sum of ₹13,09,543/- till date.

Authority observes that builder buyer agreement has been executed between both the parties and amount mentioned therein cannot be disputed by any of them as it has been signed by both the parties, unless proved otherwise. For remaining the amount of ₹4,74,793/- complainants have placed on record receipts issued by the respondent. Thus, complainants claim that they have clearly proved their case. Authority therefore concludes that complainants have paid to the respondent a sum of ₹15,09,543/- and not ₹13,09,543/-.

5. Further, this project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of the complainants. The view already expressed by Authority on 03.03.2022 therefore stands confirmed. Hence, Authority directs the respondent to refund to the complainants the amounts paid by them along with interest 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 9.30% (7.30% + 2.00%) from the date amounts were paid till today.

However, for the amount of ₹10,34,750/- complainants have not annexed any cheques or receipts, therefore, the dates on which said amount was paid could not be determined. Hence, said amount has been deemed to have paid on date of execution of builder buyer agreement. Perusal of builder buyer agreement reveals that there is no date mentioned in said agreement as to its execution. However, said document bears a stamp mark dated 02.04.2013 of Delhi Government which merely depicts that said stamp paper was released by treasury on 02.04.2013. It does not mean that agreement was executed on 02.04.2013. Complainants have placed on record a letter

dated 22.08.2013 sent by Mr. Rajneesh Bhasin to respondent wherein Mr. Rajneesh has requested the respondent for change of right of flat no. T6-603 in favour of present complainants. However, it also does not signify date on which present complainants had purchased the booking rights. Complainants have also placed on record a letter dated 04.09.2013 annexed as Annexure P-3 issued by respondent to the complainants stating therein that their booked unit has been changed from T6-603 to T15- 502. Said document is the only dated document signed by respondent from which it can be inferred that respondent had recognized present complainants as its allottees. Therefore, in absence of any other evidence, and based on best evidence placed on record, Authority observes that complainants will be entitled to interest on ₹15,09,543/- from 04.09.2013 till date. Accordingly, total amount along with interest calculated at the rate 9.30% works out to ₹27,02,706/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 30.03.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹10,34,750/-	04.09.2013	₹8,25,220/-	₹18,59,970/-
2.	₹2,00,000/-	11.10.2013	₹1,57,616/-	₹3,57,616/-
3.	₹2,74,793/-	08.01.2014	₹2,10,327/-	₹4,85,120/-
Total	₹15,09,543/-		₹11,93,163/-	₹27,02,706/-

Respondent is directed to make entire payment of ₹27,02,706/- to the complainant within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 .

6. Complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.”

2. Thereafter, respondent filed an application on 30.09.2022 for modification/correction of order dated 30.03.2022 on the ground that complainants before approaching the Authority had already filed a

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consumer complaint bearing no. 847 of 2021 before Hon'ble National Consumer Disputes Redressal Commission and Hon'ble NCDRC had passed its final order on 11.02.2022 whereby respondent has been directed to complete the project within one year and offer possession to complainants along with delay interest @6%. It has been stated that this fact was brought to notice of Hon'ble Authority and copy of order passed by Hon'ble NCDRC was also supplied, however, inadvertently while deciding the complaint, this fact was not considered by the Authority. It has also been stated that complainants had concealed the relevant facts before approaching the Authority, therefore the complaint filed before this Authority is in complete violation of settled principles of law and order passed by Authority in said complaint needs to be modified as complainants can't take benefit of two forums. It has further been submitted that complainants have made payment of ₹13,09,543/- and Authority in its order dated 30.03.2022 had inadvertently observed that complainants have paid ₹15,09,543/-. So, it has been prayed that application be accepted and order dated 30.03.2022 be rectified and modified.

3. However, during arguments of application dated 30.09.2022, learned counsel for the respondent admitted that order dated 11.02.2022 passed by Hon'ble NCDRC was not placed before Authority in present case rather it was placed in bunch of some other cases, as

order dated 11.02.2022 could not be located in the file. She however argued that the fact remains that the complainants had already approached Hon'ble NCDRC and had obtained order in their favour, therefore, order dated 30.03.2022 may be rectified.

4. Authority has also perused the file in present case and it is revealed that no order of Hon'ble NCDRC was placed by respondent during hearing of the matter on 30.03.2022. Therefore, the Authority after considering the fact of case and documents available on record passed the order dated 30.03.2022 in all its wisdom and if the relief sought by the applicant respondent is allowed at this stage, it will be a review of its own order by the Authority. Further, with regard to the issue of respondent that complainants have made payment of ₹13,09,543/- and Authority in its order dated 30.03.2022 had inadvertently observed that complainants have paid ₹15,09,543/-, it is observed that Authority in Para 4 of order dated 30.03.2022 (reproduced above) has already dealt with said issue and has given reasons for arriving to conclusion that complainants have paid a sum of ₹15,09,543/- and not ₹13,09,543/-. So, modification of order in respect of this issue is also disallowed.

Further, it is pertinent to mention that under section 39 of the RERA Act of 2016, the Authority may, with a view to rectify any mistake apparent from the record, amend any order passed by it.

However, proviso to section 39 further provides that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of the RERA Act, 2016. Authority cannot review its order, therefore the application filed by the respondent for modification of order dated 30.03.2022 is rejected. Respondent is at liberty to avail other remedies available as per law.



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NADIM AKHTAR
[MEMBER]



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Dr. GEETA RATHEE SINGH
[MEMBER]