



Complaint No. 1551 of 2019

HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 1551 OF 2019

Sanjeev Sirohi

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM: Rajan Gupta
Anil Kumar Panwar

Chairman
Member

Date of Hearing: 06.11.2019

Hearing: 5th

Present: - Mr. Sanjeev Sirohi, Complainant in person

Ms. Apurva, Proxy counsel for the respondent

ORDER (ANIL KUMAR PANWAR - MEMBER)

1. Complainant Sanjeev Sirohi had booked a plot in respondent's project named "Parsvnath City" Sonapat and due to failure of respondent to offer him possession, he filed a complaint No. 12 of 2018 seeking possession and compensation for delayed period. The parties thereafter arrived at a compromise and said complaint was disposed of on 10.07.2018.
2. The complainant then filed another complaint No. 381 of 2019 averring that although the respondent had paid him the settled amount but he had neither obtained part-completion certificate nor had delivered him possession and therefore, he shall be awarded further compensation for the delay in delivery of possession.
3. After hearing the parties and on perusal of the record, the Authority on observing that possession had not been delivered, had directed the respondent to further compensate the complainant for the delay by paying interest on the already paid amount from the date of settlement till the actual date of offering possession at the rate prescribed under Rule 15 of the HRERA Rules, 2017. The complainant has now filed the present complaint for execution of the order so passed on 10.04.2019 by this Authority in complaint No. 381 of 2019.



4. The respondent on 17.10.2019 had tendered a draft amounting to Rs. 1,21,202/- towards the delay compensation payable to the complainant. On the same date, the respondent filed an application for rectification of the order dated 10.04.2019 passed in complaint No. 381 of 2019. So, the Authority will first take up the said application for adjudication.
5. The Authority in its order dated 10.04.2019 has observed that the possession of the plot has not been offered so far to the complainant. Said observation, according to the respondent, was wrongly made in the order because he had already offered possession of the plot to the complainant on 21.09.2017. The Authority regrets its inability to accept the contention.
6. Pertinent to mention is that the order containing the impugned observation of the Authority was uploaded on its website on 12.04.2019. So, there is a presumption that the respondent had acquired the knowledge of the observations made in the order within a reasonable time of uploading of the order. For the reasons best known to the respondent, he did not promptly move an application for rectification and has rather filed it when the complainant had approached the Authority for execution of the order. So, it appears that the application has been filed with the sole motive of putting up a defence against execution.
7. The matter can be further scrutinized even from a different angle. As pointed out by respondent, offer of possession was made to complainant



on 21.09.2017. Since the offer so made was without obtaining part-completion certificate, the same was not a valid offer. So, the Authority's observation that possession of the plot has not been offered to the complainant so far, is even otherwise not liable to rectification.

8. Next point requiring determination is as to whether the amount of delay compensation tendered vide draft No. 032475 dated 16.10.2019 is not proper because the complainant's submissions on the point is that the respondent for the purpose of awarding delay compensation has wrongly calculated the interest on an amount of Rs. 9,09,246/- whereas the same in fact should have been calculated on Rs. 13,30,640/-, which is the actual amount already paid to the respondent. The Authority after hearing the parties and going through the record finds merit in the complainant's contention.

9. The respondent has filed a calculation sheet revealing the manner in which interest for awarding delay compensation was assessed. Therein, the respondent had calculated the interest on a total amount of Rs. 9,09,246/-, which was shown to be the amount already paid to him by the complainant. The complainant's submission however is that the respondent while making payment of the amount settled between the parties in complaint No. 12 of 2018, had adjusted a sum of Rs. 4,21,394/- towards the basic cost of the plot and therefore, the said amount shall form the part of amount he had already paid to the respondent and if so, the interest thereupon is liable to be calculated



for the purpose of assessing exact amount of delay compensation. The respondent in the calculation sheet submitted on record has himself shown that he while paying the settled amount of Complaint No. 12 of 2018, had adjusted Rs.4,21,394/- towards the basic cost of the plot payable by complainant. If so, the total amount already paid by the complainant to the respondent shall be considered as Rs. 13,30,640/- and not merely Rs. 9,09,246/-. So, the respondent should have calculated the interest on Rs. 13,30,640/-.

10. Section 11(4)(b) of the RERA Act casts a duty on the promoter not only to obtain completion/part-completion certificate for plotted colony but also to make it available to the allottee. Section 19(10) of the Act mandates that the allottee shall take physical possession of the purchased property in the plotted colony within two months of obtaining completion/part-completion certificate meaning thereby that the allottee is not obliged to accept possession if it is offered without completion/part-completion certificate. In other words, conjoint reading of the aforesaid provisions makes it clear that the offer of possession without obtaining completion/part-completion certificate cannot be considered a valid offer. It is not disputed that the respondent has not yet obtained the part-completion certificate from the concerned department. So, the alleged offer of possession made on 21.09.2007 cannot save the respondent from paying interest to the complainant till an offer for possession is given to the complainant after



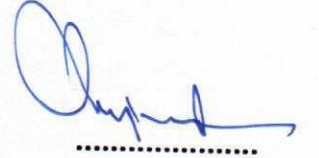
obtaining part-competition certificate. So, the complainant's right to claim compensation for delay in delivery of possession shall continue till an offer is made to him by the respondent after the grant of completion/part-completion certificate.

11. The respondent for the purpose of awarding delay compensation has calculated the interest on Rs. 9,09,246/- as Rs. 1,21,202/- whereas the said amount of interest when calculated on an amount of Rs. 13,30,640/- comes to Rs. 1,89,339/-. So, the amount already paid through demand draft no. 032475 dated 16.10.2019 is therefore deficit by Rs. 68,137/-.

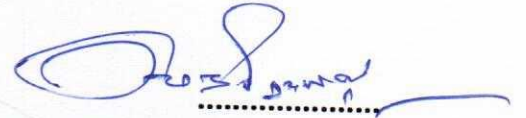
12. In view of the above discussion, the present execution petition is disposed of with direction to the respondent to pay a further sum of Rs. 68,137/- to the complainant within 45 days from the date of uploading of this order. The amount so payable shall discharge respondent's liability for delay compensation till 06.11.2019 because the interest has been calculated only till said date. The complainant will be entitled to approach the Authority at the appropriate stage, if need arises, for further recovery of interest from 06.11.2019 to the actual date on which a valid offer for possession is made by the respondent. The amount already deposited by the respondent vide bank draft No.032475 dated 16.10.2019 in the office of this Authority shall be disbursed to the complainant in accordance with office procedure.



13. The complaint is, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website.



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RAJAN GUPTA
[CHAIRMAN]



.....
ANIL KUMAR PANWAR
[MEMBER]

