



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 723 OF 2019

Nishant Bansal

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 1115 OF 2019

Sunita Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 1770 OF 2019

Suman Bajaj

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

4. COMPLAINT NO. 1774 OF 2019

Amit Bajaj

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

Present: - Mr. Yashish Chandra, Counsel for the complainants
(in complaint no. 723,1770,1774,1775 of 2019)

Mr. Gaurav Gupta, Proxy counsel for the complainant
(in complaint no. 1115 of 2019)

Mr. Dinesh Kumar Manyal, Complainant in person
(in complaint no. 2218 of 2019)

None for the complainant
(in complaint no. 1680 of 2019)

Ms. Rupali S. Verma, Counsel for the respondent

ORDER (ANIL KUMAR PANWAR - MEMBER)

1. The basic controversy involved in all the above captioned complaints is similar and grievances raised therein are directed against the same project of the respondent. So, all these complaints are being disposed of by this common order.

2. Before delving upon the facts and merits of the case, it deserves to be mentioned that respondent has paid the cost of ₹1,50,000/- through demand draft no. 033860 dated 11.03.2020, as imposed upon him vide order dated 06.02.2020.

3. Factual matrix and documents will be discussed on the basis of averments and record of complaint case no. 723 of 2019 titled Nishant Bansal Versus M/s Parsvnath Developers Ltd. which is treated as lead case.



4. Complainant Nishant Bansal is deriving his rights through Santosh Bansal who had booked a plot measuring 400 sq. yards in a township named 'Parsvnath City' under 'Present and Future Scheme' launched by the respondent company at Sonipat, Haryana. Santosh Bansal had paid advance money of ₹2,25,000/- to respondent on 25.08.2004 for allotment of plot @ ₹3,600/- per sq. yard. Santosh Bansal had sold his booking rights in the plot to Gopi Chand and the present complainant Nishant Bansal had subsequently purchased the booking rights from Gopi Chand. The respondent had already endorsed the transfer of booking rights in favour of complainant Nishant Bansal on 06.04.2010. It has been averred that Nishant Bansal and his predecessor-in-interest had already paid ₹7,90,000/- which forms fifty percent of the total sale consideration of ₹14,40,000/- and he is ready to pay the balance sale consideration. According to the complainant, the respondent was obliged to pass on to him the title and possession of the booked plot on payment of remaining fifty percent sale consideration. However, he has neither allotted him the plot nor has offered possession till date. So, the complainant has filed the complaint seeking relief of possession along with delay compensation.

5. Respondent has not disputed the booking of 400 sq. yards plot by original applicant Santosh Bansal @ ₹3,600/- per sq. yard and subsequent transfer of booking rights firstly, to Gopi Chand and then to present complainant. He has also admitted that he had endorsed the booking rights in



favour of present complainant Nishant Bansal on 06.04.2010 and that he had already received a total sum of ₹7,90,000/- from the complainant and his predecessors-in-interest till date. The respondent, however, has disputed the complainant's right to have the plot as according to him, the booking by original applicant was merely an advance registration to avail inaugural discount and the original applicant, as per the clauses set out in his application form, has agreed that in case the respondent company fails to allot plot for any reason whatsoever, he would not raise any other claim except for refund of the amount along with 10% interest. It was further pleaded that the present complainant is bound by the above referred condition because he had also executed a document in the form of an 'affidavit-cum-undertaking and indemnity' at the time of seeking transfer of booking rights in his favour. The respondent has further pleaded that township in Sonipat was planned to be developed upon various pieces of land which was to be acquired from various farmers. However, land admeasuring 200 acres had been acquired by the government out of those pieces and therefore, development of township at Sonipat in the planned manner was ruined. He had undergone litigation with the government for withdrawal of acquisition but in vain. So, he can now offer allotment to the complainants in other townships developed by him in cities of Panipat, Rajpura and Indore.

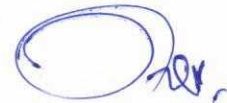
6. During the course of arguments, the complainants have declined the offer for taking allotment in other cities. It was submitted on behalf of the



complainants that they are not interested to take refund because they are legally entitled for the allotment and possession of booked plots. According to them, the respondent has allotted plots on premium to other buyers by ignoring their rightful claim.

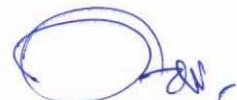
7. The argument raised by the respondent was that no plot is available in Parsvnath City, Sonipat for allotment to the complainants but such stand of the respondent was vehemently disputed by the complainants. So, with a view to assess as to whether the respondent had derived undue advantage of the money collected from the complainants by selling plots to other buyers at escalated market value and usurped the premium which the complainants should have otherwise availed in case plots were allotted to them, this Authority vide order dated 19.09.2019 had directed the respondent to furnish certain information. Said information was sought in the form of an affidavit on the following points: -

- i) Category wise plots approved in the layout plan by the department of Town and Country Planning and revised layout plan, if any. Copy of the same be produced before the Authority.
- ii) Procedure and parameters adopted by the respondent in allotment of the plots to various allottees.
- iii) Year wise details of the allotments made by them and to whom the allotments are made in a tabular for mentioning his application date and allotment date.



- iv) Category wise complete details of plots in Block-A and Block-B of the project and unallotted plots in these blocks by the time the complainant filed this complaint in the Authority.
- v) Plots affected by acquisition be shown distinctly on approved layout plan/demarcation plan and plots offered to any other allottee out of that area.
- vi) Whether services and infrastructure are provided in the project as per approved demarcation plan and service plan estimates.
- vii) Details of the plots allotted within last six months, if any, alongwith details of allottees and date of their applications received in the respondent's office.

8. The respondent has thereafter filed an affidavit but he has not disclosed therein the precise criteria adopted for allotment of plots to those persons who had booked plots in Parsvnath City, Sonipat. He has also concealed the names of the persons to whom plots have been allotted in the said Project and the dates on which bookings were made by the persons to whom plots have been so allotted. He has also failed to disclose the number of un-allotted plots available in the Parsvnath City, Sonipat. Concealment of such information calls for an adverse inference against the respondent. So, it can be safely assumed that the plots have been sold at premium by ignoring the legitimate rights of the complainants for allotment of plots and respondent had earned premium by effecting illegal sales. That being the situation, the




Authority has no hesitation in concluding that the complainants are entitled for allotment and delivery of the booked plots.

9. Learned counsel for the respondent has argued that the present complainants, as per the clauses set out in the 'application forms' submitted by original applicants and 'affidavit-cum-undertaking and indemnity' furnished by the complainants themselves, are entitled only to refund of the paid amount alongwith interest and therefore, they can't be held entitled for allotment and delivery of booked plots. The referred clause was reproduced by the respondent at internal page no. 2 of his reply and the same reads as under:-

“Though the company shall try to make an allotment but in case it fails to for any reason whatsoever, no claim of any nature, monetary or other would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

(...emphasis laid)

In the considered opinion of this Authority, use of words 'the company shall try to make an allotment' casts a duty on the respondent company to make all efforts for allotment. Such efforts must be sincere and the respondent thus was not at all permitted to indulge in an act which was likely to vitiate the rights of complainants in any manner. So, the referred clause would be helpful to the respondent only if he had made sincere efforts to allot plots to the complainants. As earlier observed, the respondent herein has not disclosed as



to what criteria was adopted for allotment of plots. He has not laid before the Authority the documents to prove that a fair criterion was adopted for allotment of plots to all eligible applicants. Due to concealment of such information, the Authority in the preceding paragraph of this order has been constrained to observe that the plots have been sold at premium by ignoring the legitimate claims of the complainants. So, the Authority regrets its inability to uphold the respondent's contention that complainants are not entitled to allotment and are merely entitled to refund of amount alongwith interest.

10. The matter about complainants entitlement for allotment can be looked into even from a different angle. Admittedly, the respondent had already endorsed the transfer rights in favour of the complainants. If the respondent was keen to refund the amount and was not in a position to allot the plots, he should have exercised such option of refunding the already paid amount alongwith interest to the complainants when they had applied for transfer of booking rights. The respondent did not exercise such option and continued to withhold the already paid amount. This would imply that he had agreed to allot plots to the complainants instead of acting upon the clause which entitled him to refund the money alongwith interest. That being so, it does not now lie in the mouth of the respondent to claim at this stage that he does not have plots for allotment to the complainants or that the complainants are entitled only for refund alongwith interest.



11. Needless to mention that the respondent was under obligation to first allot the plots to those persons from whom he had received the advance money and without satisfying them, he was not permitted to sell the plots to subsequent purchasers. Allotment of plots without adopting a criteria of first come first served has put the complainants to dis-advantage inasmuch as they have been deprived of the money which they could have earned due to escalation of prices. So, the complainants deserve to be held entitled for allotment and possession of the plots they had booked.

12. Now the only question requiring determination is whether or not the complainants are entitled to have plots in the project Parsvnath City, Sonipat. The complainant's case in lead case is that the respondent launched a township named Parsvnath City under "Present and Future Scheme" at Sonipat to sell plots and a plot booked by Mr. Santosh Bansal to whom respondent had provided customer code no. PS/S0274, was subsequently purchased by Mr. Gopi Chand and then was purchased by him from said Gopi Chand. The respondent's averment on this point is that he had not launched a township named Parsvnath City under 'Present and Future Scheme' at Sonipat, Haryana.

13. In order to ascertain whether or not any project was in fact launched at Sonipat with the name Parsvnath City, this Authority has enquired the matter from the project section of the Authority. Thereupon, it was revealed that such project indeed was launched by the respondent promoter at



Sonipat bearing license no. 878-894 of 2006 dated 25.04.2006. Interestingly, the payments from the original applicants were collected prior to the year 2006. This will manifest that the complainants and their predecessors-in-interest had booked plots in pursuant to the advertisement floated in or around the year 2006. Some of the receipts issued to the complainants conspicuously reflect the name of the project as Parsvnath City, Sonipat. Reference in this regard can be made to the receipts available at page no. 13-14 of complaint no. 1115 of 2019 titled Sunita Jain Versus M/S Parsvnath Developers Ltd. and page no. 35 of complaint no. 1680 of 2019 titled Rekha Talwar & Ors. Versus M/S Parsvnath Developers Ltd.

14. In the backdrop of these circumstances, it can be easily deciphered that the complainants and their predecessors-in-interest had booked plots in the project named Parsvnath City, Sonipat. Such an inference stands further fortified from the fact that respondent has not been able to produce any material on record to indicate that some project other than Parsvnath City, Sonipat was launched at Sonipat in or around the year 2006. The Authority, in these circumstances has no hesitation to conclude that complainants are entitled to have plots in the project named Parsvnath City, Sonipat.

Respondent in the aforementioned situation has then sought to defeat the complaints arguing that the same have been filed after inordinate delay. According to him, the complainants have approached the Authority in the year



2019 for allotment and possession of the plots which were booked prior to the year 2006 and therefore, the cause of action is time barred. The argument is not acceptable because it is nowhere the respondent's case that he had offered possession of the plots to the complainants at any point of time and the latter had refused or failed to accept such offer and pay the balance fifty percent amount which was payable at the time of such offer of possession.

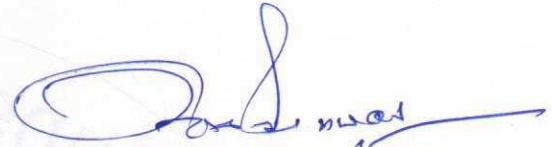
15. For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots to the complainants in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall comply with these directions within 90 days from the date of uploading of this order. In case the respondent due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from the open market at his own cost. The respondent however will be entitled to recover from the complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots.



16. With these directions, the captioned cases are **disposed of**. Files be consigned to record room after uploading of the order on the website of the Authority.



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]