

**HARYANA REAL ESTATE REGULATORY AUTHORITY,  
PANCHKULA.**

Date of Hearing: 08.01.2019  
1<sup>st</sup> Hearing

**Complaint. No.1082/2018** Shalini Kashyap ... Complainant

Versus

Parsvnath Developers Ltd. ...Respondent

**Coram: -**

1. Shri. Rajan Gupta, Chairman
2. Shri. Dilbag Singh Sihag, Member

**Appearance: -**

1. Ms. Shalini Kashyap, Complainant in person
2. Ms. Rupali S Verma, Counsel for Respondent

**Order: -**

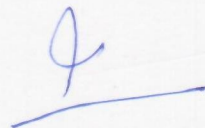
The case the complainants is that she along with her son had booked an apartment in June, 2007 in the "Parsvnath Royal" project of the respondents at Panchkula Flat No. T-5-301 on the 3<sup>rd</sup> floor measuring 1780 sq. Ft was allotted. Total sale consideration of the apartment was Rs.73,08,750/-. The complainant had opted for construction linked plan. The complainant paid booking amount of Rs.10.51 lakhs in June, 2007. On receipt of demand from the respondents another about Rs.7 lakhs were paid in April, 2008. The buyer's agreement was signed in October, 2008. As per the agreement the possession of the apartment was to be handed over



within 36 months inclusive of the grace period which comes to April, 2012. In September, 2011 another payment of about 8.21 lakhs was made. Complainant states that even though the respondents had later assured that the apartment will be completed and delivered by December, 2012 but when she visited the project site in the end of 2011, she was shocked to see that there was not structure constructed at all. No person was present at the site to assist the complainants. Since there was no progress of the project, she requested for refund of the money because it was apparent that it may take another 4-5 years to complete the project. The complainant who is an old widow lady kept visiting the office of respondent No.1 but nobody entertained her. She has been making requests in writing for refund of the money.

The complainant prays that she has already paid an amount of Rs. 25,73,685/-; almost 11 years had lapsed; now she has lost faith in the respondent and would like her money to be refunded. The complainant further says that she is a retired principal of a school, her entire money has been invested and now she is not in a position to take the apartment by paying additional 50 lacs or so even if the apartment is offered by the respondent.

2. The respondents filed their reply today itself in the court. They have pleaded that the complainant had booked the flat for investment purposes. They are developing the project in terms of the statutory approvals. The





complainant voluntarily and with her own free will had signed the flat buyer's agreement in 2008. As per the payment plan 65% of the amount, up to the 7<sup>th</sup> floor, was due in March, 2013 whereas the complainant had deposited only 35% of the sales consideration. The respondent alleges that the complainant had defaulted in making payments. Due to her non-payment, a pre-cancellation notice dated 13.5.2013 was issued to her. The notice issued by the respondent for depositing balance amount was not honoured by the complainant, therefore, the respondent vide their letter 13<sup>th</sup> July, 2013 cancelled the allotment of the apartment. Now the complainant does not have any right or entitlement on said flat because the booking had been cancelled in 2013. Furthermore, the complainant never approached the respondent for refund of the balance amount therefore her claim for refund was not processed. The flat was cancelled as per agreed terms of the flat buyer's agreement.

The respondent states that the contract between the parties was subject to timely payment by the buyers. Since the complainant is a defaulter, this complainant is liable to be dismissed.

4. Written pleading as well as oral submissions of both the parties have been examined in detail. It is observed and ordered as follows: -

- (i) There is no denial to the fact of flat-buyer agreement having been made in 2008. There is also no denial to the fact of payment of Rs.25,73,685/- by the complainant up to





September, 2011. It is also a fact that due date of offering the possession was April, 2012, but the possession of the flat has still not been offered even though the respondent is suggesting to offer the possession sometime in the year 2019. Breach of contract on the part of the respondent therefore is clearly established.

- (ii) This project of the respondent is registered with the Authority in which the completion date has been indicated to be December,2019. In several other cases serious default on the part of the respondent in meeting the agreed deadlines for completion of the project have been noted.

An important question that arises here is that the complainant is a 70 years old widow. She is a retired principal from a school. The basic sale price of the project is Rs.73 lakhs against which she has paid little over Rs.25 lakhs. Even if the possession is offered now, the complainant will have to pay additional huge amount of over Rs. 48 lakhs to the respondent. Keeping in view the age and circumstances of the complainant it seems impossible that she will be able to do so. Accordingly, it will be unfair on the part of the Authority to force her to pay such a huge amount of money after so much



delay while clearly understanding that this will be a herculean task for her. The basic purpose of purchasing the apartment has already been frustrated because of the inordinate delay caused by the respondent. A retired person cannot be expected to hold such a large sum of liquidity to pay for the apartment of which there is no hope of early completion.

Accordingly, the Authority cannot force the complainant to pay the money. Instead it shall direct the respondent to refund the money paid by her.

- (iii) It is also important to note that the respondent had cancelled the allotment in July 2013. It is expected from a professional organization that along with the cancellation balance money should be refunded forthwith. As per Clause 5(a) of the agreement 15% of the basic sale price could be forfeited in the event of default leading to cancellation. 15% of the Rs.70 lakhs basic sale price come to about Rs.10.50 lakhs. The respondent should have deducted this money from the amount paid by the complainant and rest refunded along with cancellation letter. The respondent chose to sit quiet on this. They are using money of the complainant since 2011, and did not even bothered to enter into correspondence with her all these years. The Authority observes that it was the






responsibility of the respondent to refund the balance money which they had no right to retain. The respondents, therefore, have defaulted in not making timely refund of the balance money. They, therefore, shall be deemed to have forfeited their right to invoke Claus 5(a) of the agreement for deduction of 15% of the basic sale price. This clause will further not be applicable because the agreement has been frustrated solely due to the non-performance of contract by the respondent. Their project is still hanging fire and may take considerable time to complete. They are still defaulting in meeting the deadlines given by themselves for completion of the project.

5. For the foregoing reasons, it is ordered that the respondent shall refund the entire money paid by the complainant along with interest calculated in accordance with Rule 15 of the HRERA Rules. The interest shall be calculated from the date the money was paid by the complainant. The refund shall be made within a period of 60 days, 50% in first 30 days and remaining 50% in next 30 days. The respondent should also deposit the cost of Rs.10,000/- to the Authority for having not filed their reply in time.

Disposed of. The file be consigned to the record room and orders be uploaded on the website of the Authority.

  
**Dilbag Singh Sihag**  
Member

  
**Rajan Gupta**  
Chairman