



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE ADJUDICATING OFFICER

COMPLAINT NO. 1798 OF 2019

Ishwar Chand Bhalla and anotherCOMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.RESPONDENT(S)

Date of Hearing: 03.03.2021

Hearing: 11th

Present: - Mr. Ishwar Chand Bhalla, complainant no. 1
Mr. R.C. Sharma, counsel for the complainant through video conference
Ms. Apurva Singh, counsel for the respondent through video conference

ORDER

Brief facts of the complaint case are as:

2. The complainants are senior citizens and with intent to lead a secured and comfortable life, they had booked flat bearing no. T2-104

Savitri Gupta

measuring 1780 sq ft. in the project of the respondent namely Parsvnath Royale, Sector 20, Panchkula. Basic sale price of the flat was ₹57,85,000/-. On 29.03.2011, flat buyer agreement was executed between the complainants and respondents no. 1 and 2. Since the completion of the project was delayed, the complainants had filed consumer complaint before State Consumer Disputes Redressal Commission, Panchkula. During the pendency of the said complaint, respondents no. 1 and 2 had promised to deliver possession within stipulated period. On the assurance given by the respondents no. 1 and 2, the complainants had withdrawn their complaint. Total amount of sale consideration ₹61,22,567.30/- was paid by the complainants. Respondent no. 1 had issued no dues certificate on 17.01.2018. When the complainant no. 1 visited the site, he was shocked to see that the work of the flat was not complete and the entire project was nowhere near completion. The complainants requested respondents to complete the work and hand over possession. The complainants were again assured to resolve all the issues and they were convinced to take formal paper possession of flat no. T1-104, for which the documents were signed by the complainants on 08.01.2018. Actual physical possession was taken by them on 03.05.2019. As per Flat buyer agreement, the construction was to be completed within 36 months with a grace period of six months which expired on 28.09.2014. In another commitment made on 30.07.2014, the respondents no. 1 and 2 had promised to hand over possession of Towers T1 and T2 by March 2015. Later on, vide

another commitment, construction of Towers T1 and T2 was to be completed by 31.07.2018. After taking physical possession of the flat, it was noticed that the flat was not in habitable condition and there were various violations of statutory provisions. Despite false promises and misrepresentations by respondents no. 1 and 2, the complainants are not able to use the flat. There is every likelihood that for long time the flat would not be brought in proper habitable condition. Respondents no. 3 and 4 are equally responsible for violations by Respondent no. 1. A number of grievances with respect to main entry gate, building plan, location of GHS no. 105 and 111, inclusion of fake area in the flat buyer agreement, construction of number of flats, provisions for differently abled persons, construction of staircase, construction of ramp and hand rail, design criteria and norms and ventilators for basement car parking, solar water heating system, single entry and exit gated community and security card system, installation of CCTV cameras, doors and windows for ducts meant for PH services and energy meters, forged building plan, construction of partition wall segregating EWS quarters and rest of the area, metalled road, swimming pool, nursery, market, community centre, recharge bore, addition of escalation charges, change of location of main gate and also doing zoning violations, flow tap of kitchen, level of floor of toilets etc still exist in the complex. Without obtaining occupation certificate, the respondents have started handing over physical possession of flats in Towers T1, T2 and T3. Respondent no. 4 has issued certificate without verifying the

facts of stage of construction of the project. A number of letters have been written to respondents no. 1 and 2 highlighting deficiencies and discrepancies in the construction of the flat of the complainants and also the total housing complex. Though the complainants had filed consumer complaint before State Consumer Dispute Redressal Commission, Haryana, Panchkula and it was dismissed as withdrawn, it was before offer of possession. After receiving physical possession of the flat, fresh cause of action has arisen in favour of the complainants. The possession delivered to the complainants is not a valid possession. Since conveyance deed can't be executed in favour of the complainants, they are entitled to compensation. The complainants have prayed for appointment of Local Commissioner to verify violations, directing respondent no. 1 to get occupation certificate, respondent no. 1 be directed to pay interest @12% p.a. from the date of taking paper possession till the respondent no. 1 gets occupation certificate and conveyance deed is executed. The complainants have also prayed for ₹ 5 lac as compensation on account of mental agony and ₹50,000/- as cost of litigation.

3. Reply has been filed by respondents no. 1 and 2 taking preliminary objections with respect to maintainability of the complaint, complaint being barred by limitation. It has further been stated that the complainants had booked the flat for investment purposes and not for living purposes. The project was being developed in terms of statutory approvals

granted by competent authorities. All statutory dues have been paid. The project is consisting of nine towers, out of which four Towers T1, T2, T3, T4 are almost complete for delivery of possession and offered for fit out purposes. In Towers T5-T9 the remaining plastering and finishing works are in progress. Initially, the complainants had booked flat no. T2-104 measuring 1780 Sq. ft by paying booking amount of ₹8,90,100/- on 03.01.2011. Flat buyer agreement was executed on 29.03.2011 by the complainants voluntarily. The complainants have already been offered fit outs of flat no. T2-104 along with final statement of accounts. An amount of ₹3,20,400/- as delay compensation for the period July 2014 to June 2017 has already been credited to the accounts of complainants. The complainants had not only filed consumer complaint before Hon'ble State Consumer Disputes Redressal Commission, Panchkula but had also filed various complaints against respondent company before several Government authorities. The dispute of the complainants was mutually settled and allotment of the complainants was shifted from T2-104 to T1-104 in the same project on as is where is basis. The complainants were well aware that occupation certificate was still awaited. The respondent company had also waived various charges and gave special rebate on account of unfinished items and also delay compensation towards full and final claim. The complainants had duly accepted the offer and took possession of shifted unit no. T1-104 vide letter dated 03.05.2019. The Court of Adjudicating Officer, Panchkula has no jurisdiction to get into the interpretation of the rights of the parties inter-

se in accordance with apartment buyers agreement. The complaint is barred by principle of estoppel. The consumer complaint before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula was disposed of vide order dated 12.01.2018 as withdrawn as settled.

On merits, all the preliminary objections taken by the complainants have been reiterated. The contents of letter dated 08.01.2018 sent by the respondents to the complainants vide which settlement was arrived at have been mentioned. The respondents no. 1 & 2 have prayed for dismissal of the complaint.

4. Separate reply was filed on behalf of respondent no. 3 stating that the application for occupation certificate for Towers T1 and T2 pocket D was refused by the Department as the construction of the towers was not complete and construction of EWS flats was not started. Chief Engineer HUDA, Panchkula had informed that services plan estimate was not approved. Issues raised by the complainants regarding size of lift, main stairs, corridor and changes in the built structure shall be examined at the time of grant of occupation certificate.

5. Separate reply was filed by respondent no. 4 stating that he was not associated with the project after it was revived. He was not involved during construction and hence has no role to play in the present complaint.

6. Case of the complainants is that the complainants had booked a flat bearing no. 104 Tower 2 measuring 1780 sq.ft. in project of the respondent namely 'Parsvnath Royale, Sector 20, Panchkula'. The basic sale price of the flat was ₹57,85,000/-. Flat buyer agreement was executed between the parties on 29.03.2011. Since the project was not completed by the respondent and the possession of the flat could not be offered to the complainants on time, the complainants had filed a complaint bearing no. 66/2017 before Hon'ble State Consumer Disputed Redressal Commission, Haryana, Panchkula. During the pendency of the complaint, respondent no.1 and respondent no.2 promised to deliver the possession of the flat bearing no. T1-104 instead of originally booked flat bearing no. T2-104 within stipulated period. The flat was relocated on request made by the complainants. On the assurance of the respondents no.1 and 2, the complainants had withdrawn their complaint before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula. The complainants had paid an amount of ₹61,22,567.30/-. No dues certificate was issued by respondent no.1 on 17.01.2018. It is the allegation of the complainants that as per promise of the respondent, paper possession of flat bearing no. T1-104 was taken by the complainants after putting signatures on the papers on 08.01.2018. Actual physical possession was handed over on 03.05.2019. The complainants have further alleged that after taking physical possession of the flat, the complainants realised that the flat was not in

habitable condition and there were various violations of the statutory provisions.

7. Learned counsel for the respondent has argued that the complainants had requested to change the allotment of flat of complainants from unit T2-104 to T1-104 at Parsvnath Royale, Panchkula and agreement to this effect was also executed between the parties. The complainants had filed complaint before District Consumer Disputes Redressal Forum, Panchkula bearing no. 135 of 2015 which was disposed of as fully satisfied. In agreement dated 08.01.2018 at serial no. (iv) it was agreed that the complainants would not raise any further claim or compensation. The copy of said agreement has been placed on the record as Annexure R-3, which bears signatures of both the complainants and authorised signatory of respondent company. Clause (iii) of Annexure R-3 says that compensation for delayed possession has been worked out in terms of the orders passed by Hon'ble District Consumer Disputes Redressal Forum, Panchkula in Complaint no. 135 of 2015 and accepted by the complainants as fully satisfied. Clause (iv) says that the complainants will not raise any further claims/damages/compensation etc of whatsoever nature and complainants also agreed that the orders of Hon'ble District Consumer Disputes Redressal Forum, Panchkula have been fully complied with, to utmost satisfaction of the complainants.

8. As per version of the complainants, they have taken actual physical possession of the flat in May 2019. The present complaint has been filed on 05.08.2019. Now the grievances of the complainants are that:

- i) In brochure of the project provided by the respondent, the main entry gate was shown to be connected to main road along GHS 105. Now the said main gate has been omitted and separate gate on the side facing thickly populated area having one marla plots, has been constructed which is not only inconvenient and distant but is a fraud played on the buyers and breach of their trust.
- ii) The building plan was wrongly prepared in terms of locations of the adjoining group housing societies that is Society no. 111 was wrongly shown in place of Society no. 105 vice versa.
- iii) Respondents no. 1 and 2 deliberately included fake area of 10 Kanal in the flat buyer agreement to make the project look more attractive and blatantly committed a crime of fraud and cheating with the buyers including complainants.
- iv) As per building plan of the project, 332 flats of different categories were to be constructed but actually the respondent no.1 and 2 have constructed 344 flats without obtaining approval of the revised building plan.

- v) Provisions for differently abled persons have not been provided.
- vi) Respondents no. 1 and 2 have not constructed the main stairs in Tower 6-9 and only fire stairs have been constructed.
- vii) Respondents no. 1 and 2 have not followed the design criteria and norms for basement car parking and have not provided proper ventilators for ventilation in the car parking.
- viii) Respondents no. 1 and 2 have not followed the norms for differently abled persons and have not provided ramped approach and handrail.
- ix) There is no provision for mandate requirement of solar water heating system.
- x) There is no single entry and exit gated community and security card system for entries into the complex as promised. CCTV cameras in common area, provision of gas supply has not been provided.
- xi) The ducts meant for the PH services and energy meters have not been provided with doors and windows which is risky for anyone.
- xii) Respondent no. 1 submitted service plan estimate for approval to competent authority which was a forged copy of approved building plan. The signatures and stamps of the

Government officers were scanned and affixed on the newly prepared building plan.

xiii) Respondents no. 1 and 2 have constructed a partition wall illegally segregating the EWS quarters and rest of the area of the project.

xiv) Respondents no. 1 and 2 have not constructed one sq.ft. metalled road within the project and they have not installed any tube well with machinery required to make it functional.

xv) Respondents no. 1 and 2 have added 49% departmental price escalation and unforeseen charges just to boost the cost of SPE.

xvi) Respondents no. 1 and 2 have not started the work of swimming pool, nursery, market, recharge bore, Community Centre etc which are part of the approved building plan.

xvii) Respondents no. 1 and 2 have changed the location of the main gate and have done zoning violations

xviii) The flow trap of kitchen is higher than the floor level of kitchen due to which water remains stagnant and it has to be disposed of in the adjoining toilet every time.

xix) Respondents no. 1 and 2 started handing over the physical possession of the flats in Tower 1, 2, 3 without obtaining occupation certificate from respondent no.3.

9. It has further been argued by learned counsel for the complainant that the possession of unit T1-104 delivered to the complainants is not a valid possession and is only a paper exercise. Without occupation certificate, complainants cannot get executed conveyance deed. Till the execution of conveyance deed on the completion of the project, the complainants are entitled for compensation. He further argued that admittedly consumer complaint was filed by complainant no.1 before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula, yet it was dismissed as withdrawn. It was filed before offer of possession was made to the complainant. Physical possession of the flat had been taken after that. After taking physical possession, fresh cause of action has arisen in favour of the complainants. This complaint can't be said to be barred by resjudicata.

10. So far as the institution of the previous consumer complaints before Hon'ble District Consumer Disputes Redressal Forum, Panchkula and Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula and the subsequent filing of complaint before this Court, it is apparent on the record that complaint before Hon'ble District Consumer Disputes Redressal Forum, Panchkula was filed in the year 2015 and it was partly allowed vide order dated 16.11.2015 vide which the respondent was directed to make the payment of an amount of ₹5 per sq. ft. per month of super area to the complainants after expiry of 36 months from the date of execution

of flat buyer agreement i.e 29.03.2011 till the date of handing over of possession, ₹1 lac as compensation for harassment and deficiency in service and ₹11,000/- as litigation expenses. Later on, Consumer Complaint was filed by the complainant no.1 before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula in the year 2017 and after settlement on 08.01.2018 between both the parties, it was dismissed as withdrawn vide order dated 12.01.2018. Copy of terms of settlement on 08.01.2018 has been placed on record as Annexure R-3. It bears signatures of both the complainants and authorised signatory of respondent company. Few terms and conditions were agreed to which include revised unit T1-104 was allotted to the complainants on fit out basis without grant of any rebate, compensation for delayed possession had been worked out in terms of order passed by Hon'ble District Consumer Disputes Redressal Forum, Panchkula and accepted by the complainants as fully satisfied. It has further been agreed that the complainants will not raise any further claims/damages/compensation etc of whatsoever nature and orders of Hon'ble District Consumer Disputes Redressal Forum, Panchkula have been fully complied with to utmost satisfaction of the complainants. The complainants will withdraw Consumer Complaint no. 66/2017 pending before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula and will not raise any further claims/damages/compensation under that consumer complaint against the company or its Directors and officials. Complainants will not file any further


claims/damages/compensation of whatsoever nature, against the company or its Directors/officials, in any Court of law and all past, present and future cases of the complainants deemed to have been settled with change of allotment and settlement of final dues. It was only in pursuance of the settlement arrived at between both the parties, the complainants had withdrawn the complaint before Hon'ble State Consumer Disputes Redressal Commission, Haryana, Panchkula. When it was specifically agreed that complainants would not raise any further claim/ damages/compensation in any Court of law and all past, present and future cases deemed to have been settled, now it does not lie in the mouth of the complainants to plead that after taking physical possession of the unit, fresh cause of action has arisen in favour of the complainants. After receiving compensation for harassment and deficiency in service and ₹5 per sq.ft. per month from the date of execution of flat buyer agreement till the date of handing over of the possession and also litigation expenses, no case for grant of further compensation is made out.

11. So far as violation in the amenities or structural defects is concerned, it is admitted case that the project has not been completed yet and neither occupation certificate nor completion certificate has been received by the respondent. The complainants are at liberty to approach the appropriate forum for violations or lack of amenities at appropriate time.


12. With these observations, the complaint is ordered to be dismissed.

13. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.

03.03.2021


DR. SARITA GUPTA
(Adjudicating Officer)

Note: This order contains fifteen (15) pages and all the pages have been checked and signed by me.


DR. SARITA GUPTA
(Adjudicating Officer)