



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in
COMPLAINT NO. 2615 OF 2019

Kamlesh Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag

Chairman
Member
Member

Date of Hearing: 30.03.2021

Hearing: 10th

Present: - Ms. Megha Gupta, counsel for the complainant through video conference

Ms. Apurva Singh, counsel for the respondent

ORDER (RAJAN GUPTA - CHAIRMAN)

1. In reference to the orders dated 03.02.2021, arrests warrants were issued on 17.03.2021 against the respondents namely Shri Pradeep Kumar Jain and Shri Sanjeev Kumar Jain. Directions were given to the Commissioner of Police, Panchkula to arrest both the Directors of respondent company. On

30.03.2021 a report dated 28.03.2021 has been received from Police Sub Inspector, Akash reporting that when Police Officer went to the residence of Shri Pradeep Kumar Jain for executing arrest warrant, he was informed that Shri Jain is out of station on account of Holi festival. It has been requested that further adjournment may be given for executing the arrest warrants. From the report it is however, revealed that the Police Officer concerned has made no attempt to execute arrest warrants against the other Director of the company named Shri Sanjeev Kumar Jain.

2. In the meanwhile, respondent company had filed an application dated 17.03.2021 through their advocate Ms. Rupali Verma for recalling the order dated 03.02.2021 and for keeping coercive action in terms of the said order dated 03.02.2021 in abeyance. In said application dated 17.03.2021 it has been averred that non-compliance of the orders of Authority is not intentional but is on account of circumstances beyond the control of the company as the company is suffering huge financial crisis on account of Covid-19 pandemic. It has further been stated that the respondent has apprised the Authority that the plot on which the villa was allotted to the complainant has come under road due to which respondent company will not able to handover possession of the said villa at present or even in future as the land has been acquired by the State Government for the purpose of road. In the circumstances, that the villa cannot be constructed, the respondent is ready to refund the amount deposited by the complainant along with interest as per

9

RERA Act and Rules. Further, the respondents stated that they have already paid an amount of ₹5,88,181/- vide demand draft no.035348 dated 05.02.2021 being 25% of the amount awarded by the Authority. Further, the respondent company is ready to make balance payment of amount in three instalments of same amount each starting from 10.04.2021 upto 10.06.2021. A prayer accordingly has been made for cancelling arrest warrants and for granting extension of time for making payment of remaining amount. Further, the respondent may be allowed to refund the entire deposited amount along with interest since the villa allotted to the complainant cannot be handed over even in future due to circumstances beyond the control of the company.

3. The respondents had also submitted additional reply dated 18.01.2021/25.01.2021 before this Authority which could not be discussed by the Authority in its orders dated 03.02.2021. The gist of the additional reply is that the plot in question remained frozen by the State Government authorities on account of re-alignment of the roads in the relevant sectors. Further, the delay caused is beyond the control of the respondents. It had been prayed that on account of the force majeure circumstances explained in the additional affidavit, the claim of possession with delay interest before the Authority is not maintainable and a prayer has been made for dismissal of the complaint.



4. Today, learned counsel for the respondent stated that a demand draft of ₹5,88,181/- has been prepared and will be deposited in the bank account of the complainant during the course of the day.

5. The Authority has examined all facts and circumstances of the case and has also gone through its previous orders. It observes and orders as follows: -

(i) First of all, a reply dated 02.03.2020 was filed by the respondent on 09.03.2020 in which details of the matter as have now been stated by the respondent company in their additional reply dated 18.01.2021/25.01.2021 were not revealed. No mention whatsoever was made that the villa allotted to the complainant cannot be delivered on account of the force majeure conditions of re-alignment of the sector roads and that land of the villa falls in the road itself. Further, even in the additional affidavit no lay out plan of the colony has not been submitted to substantiate their claim that plot actually has come under road. Certain correspondence undertaken with the Town & Country Planning Department and orders of the Director, Town & Country Planning Department however, have been brought on record to show that the plot in question was actually frozen. This fact now will have to be proved with certainty that the plot on which villa of the complainant was to be constructed has actually



come under road and it is not possible for the respondent to deliver the same. Further, the respondent will have to prove without any doubt before the Authority that it is not possible for them to allot any alternate villa, to the complainant in the same project, which is as closely and similarly situated as the originally allotted villa. After receipt of this information from the respondent the Authority would proceed further in the matter for passing appropriate orders in regard to the delivery of the possession of the villa.

(ii) Admittedly however, an amount of ₹24,19,168/- had been paid by the complainant to the respondent by the year 2009. Further, admittedly, the alleged force majeure conditions arose during the subsequent years from 2013.


(iii) In the considered view of the Authority if it was not possible for the respondent company to deliver possession of the apartment to the complainant due to the circumstances now being explained by them, they should have returned the money of the complainant along with detailed intimation relating to force majeure conditions and admissible interest. The respondent however chose to keep the money of complainant for more than 12 years. It can be well understood that the complainant has been put through tremendous hardships. It was on account of these



circumstances that the Authority during the 8th hearing on 19.01.2021 had observed as follows:

“On perusal of record, Authority observes that respondent vide order dated 02.12.2020 was directed to either file reply to show cause notice issued or else pay the amount of delayed interest as calculated by the Authority by today. However, no compliance has been made by the respondent and there seems no justifiable cause for non-payment of delayed interest as already ordered by the Authority. The Authority prima facie observes that respondent was under an obligation to hand over the possession of the plot by 2009. Already there is delay of approximately 12 years, but neither possession of the villa has been offered nor delay interest has been paid to the complainant. The amount of delay interest accrued till date will remain payable to the complainant whether order of refund or of possession is passed in favour of complainant. Said interest will remain admissible and will not be affected by any additional reply filed by the respondent. However, on request of respondent case is being adjourned to 03.02.2021 with a direction to the respondent to pay delay interest of ₹23,52,723/- to the complainant before the next date of hearing failing which the conduct of the respondent will be construed as deliberate disobedience of the orders of the Authority and the Authority will be constrained to issue arrest warrant against the Directors of the respondent company. Further, a show cause notice is issued to the respondent as to why a penalty of ₹25,000/- be not imposed upon him for non-complying with the orders of the Authority.”

(iv) The Authority in its orders dated 14.10.2020 has ordered payment of interest amounting to ₹23,52,723/- to the complainant in order to mitigate the hardships being faced for the last more than a decade. On 02.12.2020 the respondent company had failed to comply with the orders. The Authority vide its previous orders



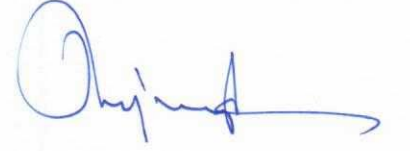
dated 02.12.2020 had decided to issue show cause notice as to why they shall not be sent to civil imprisonment for non-payment of amount in question under Order 21 Rule 38 of Code of Civil Procedure, 1908.

(v) In accordance with the logic explained in order dated 19.01.2021 the Authority is in the process of implementing its orders of insisting upon the respondent to make payment of delay interest amounting to ₹23,52,723/-. The arrest warrants in question which have been received un-served were issued by the Authority in the above explained context.

(vi) The plea of the respondent is that they have already paid an amount of ₹11,76,362/- (including the amount of demand draft today prepared) which is 50% of the total amount payable. The Authority decides to grant a short adjournment upto 15.04.2021 to enable the respondent to pay the remaining decreed amount along with penalty of ₹25,000/- and earlier imposed cost of ₹5,000/- to the Authority and ₹2,000/- to the complainant before the next date of hearing failing which fresh arrest warrants against both the Directors will be issued.



6. Case is adjourned to 15.04.2021 with a direction to the respondent to deposit the above referred demand draft in the account of the complainant and pay remaining balance on next date, otherwise fresh warrants of arrest will be issued.



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RAJAN GUPTA
[CHAIRMAN]



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]

