

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

Complaint No. RERA-PKL 321 of 2018

Savita Kathuria.

...Complainant

Versus

M/s Parsvnath Developers Pvt. Ltd.

...Respondent

Coram:

1. Shri. Rajan Gupta, Chairman
2. Shri. Anil Kumar Panwar, Member
3. Shri. Dilbag Singh Sihag, Member

Appearance:

1. Husband of the complainant in person
2. Ms. Rupali S. Verma, Advocate for Respondent

Date of Hearing: 16.01.2019 (6th Hearing)

Order:

This matter has been heard five times earlier by the Authority. The order passed after hearing parties on 11.12.2018 is reproduced as under:-

“This matter has been heard thrice earlier by the Authority. On the last date of hearing it was adjourned for today for amicable settlement or else for arguments. No settlement has been arrived at between the parties, therefore, arguments of both sides were heard.

2. The case of the complainant is that on 23.8.2004 a booking was done by one Ms. Saroj Sagar by way of “advance against present and future project” of the respondent by paying an advance of Rs. 1.75 lakhs. As per written statement the said booking was sold twice earlier, first to Shri N.K Bhasin and later to Smt. Savita Jain. A letter dated 09.07.2008

issued by the respondent also reveal that another amount of Rs.3.65 lakhs had been paid against the booking on 07.02.2006. The complainant purchased the booking on 13.06.2008 from Smt. Savita Jain. This booking was transferred in the name of the complainant by the respondent on 09.07.2018. On 22.09.2010 the respondent had informed the complainant that the allotment of plot may take some more time and the term of advance registration shall continue to be applicable till the date of allotment. The grouse of the complainant is that despite original booking in the year 2004 and despite lapse of nearly 14 years the plot has not been allotted. They have prayed for allotment of plot without further delay.

3. The case of the respondent is that original allottee Ms. SarojSagar had done the booking to avail of inaugural discount on the launch rate of the booking of a residential plot. The booking was merely an advance registration just to avail discount. At the time of booking no plot/location or name of the project was mentioned. The amount of about Rs.1.75 lakhs paid was only an advance and it was not a consideration value against any specific property. The respondent has cited a condition of booking that if for any reason the allotment plot is not made, no claim could be raised against them except that advance money paid shall be refunded with 9% simple interest per annum.

While admitting the subsequent transfer of the allotment in favour of two more persons, the respondent has pleaded that the complainant had agreed under the terms of Clause 7 of the affidavit-cum-undertaking, that in case she is not allotted any plot in the upcoming/present/future projects, then she shall accept refund of the deposited amount along with simple interest at the rate of 9%. A copy of the said undertaking has been annexed by the respondent as Annexure R/2. Total payment of Rs.5.77,500/- has been admitted by the respondent.

The respondent further states that the company had planned to develop a township in Sonipat on various pieces of lands to be acquired from the farmers in Sonipat. However, land measuring 200 acres out of the land where respondents were planning to develop the project was acquired by the State Government which ruined the planning of the respondent company. The respondent had contested litigation with the State Government for abolishing the acquisition but despite that sufficient land could not be arranged by them in Sonipat till date. The respondents are ready to allot a plot to the complainant in their other townships at Panipat, Rajpura, Indore etc. subject to availability of plots. According to the respondents there is no intentional delay on their part and the project could not materialize for reasons beyond their control. Further, the complainants were fully aware of the nature of the allotment of the booking and they had purchased the booking from open market with the



clear understanding that the project is still not materialized. The respondents have called this application filed by the applicant as misuse of the provisions of the law.

4. After consideration of the matter the Authority observes that it is adequately proved from the documents placed on record that original allottees had booked the property in "present and future projects" of the respondent. No specific project was cited except an indication that it will be in "Parsvnath City-II, Sonipat". Today, the respondents could not state before the Authority the full meaning and scope of the expression "Parsvnath City-I". If such a city does exist in Sonipat then the respondent should make an offer for allotment of plot to the complainants at any place in the City-II wherever the plots are available. If anywhere in the city a plot is available, the same must be offered to the complainants. The complainants on the other hand will be duty bound to make payment of the remaining consideration against the plot before the offer of possession. Further, if the respondents do not offer a plot to the complainant, they will furnish before the Authority details regarding allotment of plots in "Parsvnath City-II, Sonipat" after 13.06.2008 when the booking in favour of the complainant was confirmed by the respondents. The Authority is of the opinion that a person who booked a plot earlier has a superior right to be allotted the property compared with a person who booked the plot later on.

5. On the next date the respondent shall either offer a plot to the complainant anywhere in Parsvnath City-II, Sonipat or present a list of all the allotments after 2008 to see whether rights of the complainants have been superseded by the respondent in any manner. Alternately if the respondents do not offer the plot to complainants, they shall be liable to refund the entire amount of money paid along with penal interest calculated at the rate of 18% per annum for making the complainants wait for 14 years. Adjourned to 08.01.2019."

2. Today, learned counsel for the respondent states that the offers for alternative plots made to the complainant are not acceptable to her and therefore, the respondent is ready to refund the entire amount alongwith interest at the rate prescribed in Rule-15 of the HRERA Rules, 2017. Complainant's husband, who has argued the case for his spouse, has stated that the offers made to him were much inferior in terms of location and market potential and since



the respondent has neither offered him the booked plot nor had returned the money, he shall be suitably compensated by awarding penal interest.

3. The Authority after thoughtful consideration finds that the respondent has failed to produce before the Authority the list of all the allotments of made in "Parsvnath City II Sonapat" after 2008 in order to prove that the right of the complainant for allotment of plot was not allowed to be superseded by those persons who had booked the plots after 23.08.2004 i.e. the date on which her predecessor in interest Ms. Saroj Sagar had booked the plot. Furthermore, the respondent has not been able to explain as to why the money collected from complainant was not immediately refunded after realising that he would not be able to deliver her plot due to acquisition of a part of the project's land. Instead of refunding the amount, the respondent continued to withhold and utilise the complainant's money for his own benefits. So, the Authority is of the considered opinion that the complainant deserves to be awarded a penal rate of interest against the respondent.


4. This Authority in an earlier decided Complaint No. 779 of 2018 – titled as "Bimla Devi Versus Parsvnath Developers Limited has burdened the respondent to pay penal interest @ 4% per annum over and above the interest stipulated in Rule 15 of the HRERA Rules, 2017.


5. The respondent in his reply has admitted that the complainant has paid a sum of Rs. 5,77,500/- till date. So, he is directed to refund the said amount to



the complainant alongwith interest at the rate stipulated in Rule 15 of the HRERA Rules, 2017 and also to further pay complainant a penal interest at the rate of 4% over and above the interest calculated under Rule 15 of the HRERA Rules, from the date on which he had received the amount till the date of its actual refund to the complainant.

6. The complaint is **disposed of** in the aforesaid terms. It is made clear that nothing stated in this order shall preclude the complainant from approaching the adjudication officer for claiming such compensation as she may be entitled under the law. File be consigned to the record room.


Dilbag Singh Sihag
Member


Anil Kumar Panwar
Member


Rajan Gupta
Chairman