



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### COMPLAINT NO. 526 OF 2020

Kiran Khyalia &Anr.

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

**CORAM:**

**Rajan Gupta**

**Chairman**

**Anil Kumar Panwar**

**Member**

**Dilbag Singh Sihag**

**Member**

**Date of Hearing:** 31.03.2021

**Hearing:** 6<sup>th</sup>

**Present: -**

Ms. Rubai J. Singh, learned counsel for the complainants through video conference

Ms. Apurva Singh, proxy counsel for the respondent through video conference

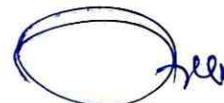
### **ORDER (ANIL KUMAR PANWAR - MEMBER)**

1. The precise dispute between the parties was captured by this Authority in its order dated 12.11.2020 and the Authority vide said order has

issued certain directions. So, the order dated 12.11.2020 is being reproduced hereunder for ready reference:

“1. Initiating her arguments, ld. counsel for the complainants stated that complainants are seeking possession of the flat bearing no. T4-202 which was booked in the year of 2010 in project named ‘Parsvnath Royale, Panchkula’ being developed by the respondent promoter. Complainants had already made a payment of ₹53,68,989.92/- against basic sale price of ₹57,85,000/-. Out of paid amount, an amount of ₹9,15,000/- had been paid to RealPro Assets towards booking of the said apartment on behalf of respondent promoter. As per flat buyer agreement executed between the parties on 27.01.2011, respondent was under an obligation to hand over the possession of the plot by 27.07.2014, but he has miserably failed to do so even after lapse of almost seven years. Nevertheless, a letter of offer for fit outs was issued by the respondent promoter on 30.09.2019 to them but the same was contested by the complainants on the ground that project is yet to be completed as per assurances given by the respondent promoter. She further stated that more than nine years have been gone from date of agreement and project is still incomplete. So, they have been cheated by the respondent promoter. Since, both the complainants are retirees and are compelled to live in rental house, therefore, they may be awarded upfront payment of delayed interest accrued till date for extra ordinary delay in handing over the possession of booked apartment as per Rule 15 of HRERA, Rules 2017 to mitigate their financial crisis.

2. On the other hand, respondent in his reply has only admitted payment of ₹44,62,389/- from the complainants against claimed amount of ₹53,68,989.92/- by the complainants. Ld. counsel for the respondent stated that towers T1, T2, T3 and T4 are almost complete and application for part occupation certificate for tower T1 and T2 has been made. Respondent is putting his best efforts to complete towers T3-T4 as well and will make an endeavour to offer the possession of the booked unit to the complainant within six months. However, offer for fit outs was made to the complainants on 30.09.2019, so the complainants shall take the possession of the unit and get it completed as per their wish. With regard to payment of delayed



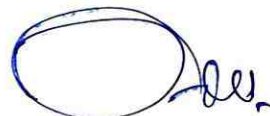


interest, respondent has already compensated the complainants for the same and final statement of accounts have been issued along with letter for fit outs. As per these statements of accounts, an amount of ₹5,69,600/- has been calculated by the respondent promoter without mentioning whether they have calculated this amount as per Rule 15 of HRERA Rules, 2017. Therefore, the same have been got verified from the office and as per office, this amount is ₹26,13,607/- till 12.11.2020. Thus, statement of accounts given by respondent is not in conformity with Rule 15 of HRERA Rules, 2017 and hence the same is unacceptable to the complainants as well as the Authority. Respondent promoter is deliberately creating confusion again and again regarding payment of delay interest. Therefore, he is again directed not to play with the Authority deliberately otherwise he will be liable to face exemplary cost.

3. After hearing both the parties and going through their respective written submissions, Authority observes that delay in this case in handing over the possession of about seven years is absolutely extra ordinary delay. Moreover, respondent has further asked atleast six months to complete T1-T4 with Occupation Certificate. Therefore, Authority does not have any hesitation to award upfront delay interest of ₹26,13,607/- as calculated by this office on principal amount of ₹44,62,389/- and for delay caused from deemed date of possession i.e. 27.07.2014 (as mentioned in complaint book) till date and directs the respondent promoter to pay said amount of ₹26,13,607/- to the complainants before the next date hearing. Authority further directs that respondent promoter may take all possible measures to meet the deadline of completion of these four towers T1-T4 and accordingly get Occupation Certificate before offering possession to the allottees.

4. Now, moot question arises with regard to amount of ₹9,15,000/- Said amount has been received by RealPro Assets as per submissions made by ld. counsel for the complainant. Complainant is therefore, directed to prove with supporting documents that this amount has been received by RealPro Assets on behalf of the respondent.

Similarly, respondent promoter is also directed to prove on next date of hearing that said amount has not been received by RealPro Assets on their behalf and said real estate agent has never been assigned any type of booking job by them.

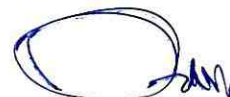


5. With these directions, case is adjourned to 14.01.2021.”

2. The Authority in the course of later proceedings held on 04.02.2021 has prima facie observed after hearing complainant’s counsel that RealPro Assets Ltd. was authorised agent of respondent company and payment of ₹9,15,000/- will therefore be deemed as a payment made to the respondent. After making such observation, the Authority adjourned the case to 31.03.2021 in view of request received from respondent’s learned counsel vide email dated 03.02.2021. The order dated 04.02.2021 is also being reproduced hereunder for ready reference:

“1. While initiating her arguments, learned counsel for the complainant stated that vide order dated 12.11.2020, complainant was directed to prove with supporting documents that an amount of ₹9,15,000/- has been received by RealPro Assets on behalf of the respondent promoter. To prove same payment has been made to RealPro Assets Ltd., learned counsel for the respondent has drawn attention of the Authority towards annexure placed at page 34 of complaint paperbook showing that a cheque dated 27.10.2010 bearing no. 198950 of ₹9,15,000/- was drawn in favour of RealPro Assets Ltd. She further tendered account statement of the complainant, Mrs. Kiran Khyalia depicting that an amount of ₹9,15,000/- has been debited from complainant’s account on 28.10.2010 for payment of cheque bearing no. 198950. This proves that ₹9,15,000/- has been paid to RealPro Assets Ltd. on behalf of respondent promoter.

2. She further drew attention of the Authority at page 34 of complaint paperbook showing that another cheque dated 25.10.2010 bearing no. 198948 of ₹8,90,095/- was drawn in favour of the respondent, Parsvnath Developers Ltd. for which RealPro Assets Ltd. has given receiving on 04.10.2010 and said document is placed at page 36 of complaint paperbook.





Furthermore, respondent has not disputed the payment of ₹8,90,095/- by way of cheque for which acknowledgement was given by RealPro Assets, then it does not lie in the mouth of the respondent to say that RealPro Assets is not their authorised agent. Therefore, it stands proved that RealPro Assets Ltd. is authorised agent of the respondent/promoter company and said payment of ₹9,15,000/- has been received by him on behalf of the respondent company.

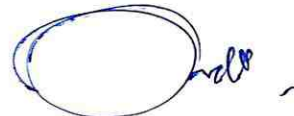
3. Mr. Shekhar Verma, learned counsel for the respondent has sought adjournment vide email dated 03.02.2021 for the reason that Bar Association of Punjab and Haryana High Court has passed a resolution for suspension of work and has called the Advocates not to appear in Courts.

4. After hearing the arguments of learned counsel for the complainant, Authority observes that prima facie it is made out that RealPro Assets Ltd. was authorised agent of the respondent promoter and payment of an amount of ₹9,15,000/- has been made to the respondent. Therefore, complainants contention that they have paid a sum of ₹53,68,989/- to the respondent stands correct and final.

Further, Authority vide order dated 12.11.2020 has awarded upfront payment of delay interest of ₹26,13,607/- to be paid to the complainants. Said interest was calculated on a sum of ₹44,62,389/- till 12.11.2020. Since it has been proved that complainants have paid a sum of ₹53,68,989/-, Authority has got calculated the delayed interest on said amount from the deemed date of possession i.e 27.07.2014 till 04.02.2021 which works out to be ₹32,59,918/- So, respondent promoter is directed to pay the complainants delay interest of 32,59,918/- before the next date of hearing failing which Authority will be constrained to proceed as per show cause notice already issued under section 63 of the Act.

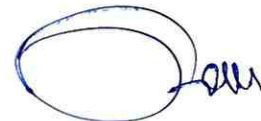
5. With these directions, case is adjourned to 31.03.2021.”

3. Learned counsel for the respondent could not put forth any argument as to how RealPro Assets Ltd. was not an agent of the respondent company in the wake of the fact that a payment of ₹8,90,095/- made by the



complainant vide cheque bearing no. 198948 dated 25.10.2010 was acknowledged by aforesaid RealPro Assets Ltd. on 04.10.2010 on behalf of the respondent company. So, the Authority has no hesitation in affirming its conclusion on the point that RealPro Assets Ltd. was authorised agent of respondent company and payment of ₹9,15,000/- received by him is binding upon the respondent company.

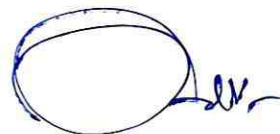
4. The only argument addressed today on behalf of respondent is that this Authority as on date has no jurisdiction to grant interest to the complainant on account of delay in offering possession because of stay granted by Hon'ble Supreme Court in SLP No. 13005 of 2020 titled as M/s Sana Realtors Pvt. Ltd. vs Union of India. The Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in a case has ruled that it is not the Real Estate Authority and rather the Adjudicating Officer appointed under Section 71 of the RERA Act, 2016 only has jurisdiction to adjudicate a complaint where the allottee wants to withdraw from the project on account of delay in delivering possession on the promised date and seeks the relief of refund of the already paid amount along with interest. Said judgement of Hon'ble Appellate Tribunal was challenged and the Hon'ble High Court of Punjab and Haryana, Chandigarh vide judgement dated 16.10.2020 passed in CWP NO. 38144 of 2018 titled as Experion Developers Pvt. Ltd. vs State of Haryana and Others had concluded that it is only the Real Estate Authority





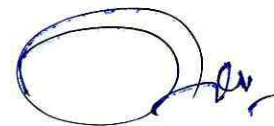
and not the Adjudicating Officer which has jurisdiction to deal with a case seeking refund along with interest. The Hon'ble Supreme Court in SLP No. 13005 of 2020 titled as M/s Sana Realtors Pvt. Ltd. vs Union of India has stayed the operation of the order of Hon'ble High Court in those cases where the promoters had filed petition challenging the judgment of Hon'ble High Court. The present respondent has neither filed any SLP before Supreme Court nor the present case is one in which complainant does not want to stay with the project. Rather, the complainant herein is seeking relief of possession and interest on account of respondent's failure to deliver possession on the agreed date. So, the argument raised by respondent's learned counsel with respect to jurisdiction of Authority to deal with the matter in issues, is not tenable.

5. The respondent in his pleadings has averred that fit out possession was offered to the complainant on 30.09.2019. Such offer of possession, as has been rightly argued by complainant's counsel, was not valid because it is indisputable that the respondent has not yet obtained Occupation Certificate. The complainants do not, therefore, intend to occupy the booked unit till the time the concerned department grants Occupation Certificate which would imply that building is fit and safe for human habitation. The complainants despite all delay on the part of the respondent in completing the project, are not interested to withdraw from the project and



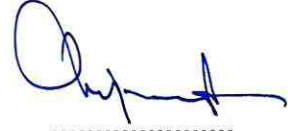
the only relief which at present can be awarded to them is to direct the promoter to pay interest for every month of delay till the handing over of possession as provided in Section 18 of RERA Act, 2016. As earlier observed by the Authority in its order dated 04.02.2021, the interest payable to the complainants on account of delay in delivery of possession from deemed date of possession i.e. 27.07.201 till the date of passing of said order i.e. 04.02.2021 works out to ₹32,59,918/-. Besides the said amount of interest, the complainants are also entitled to receive each month's interest on the already paid amount of ₹53,68,989/- from 04.02.2021 onwards till the delivery of actual possession after obtaining Occupation Certificate. Such interest works out to ₹76,607/- as got calculated by the accounts branch of this Authority, from 04.02.2021 till the date of passing of this order i.e. 31.03.2021.

6. In view of above discussion, the complaint is disposed of with a direction that respondent shall pay to the complainants interest of ₹33,36,525/- (₹32,59,918/- + ₹76,607/- ) within 45 days from the date of uploading of this order and will further pay to the complainants every month's interest till handing over of possession of the flat, which on calculation as per Rule 15 of HRERA Rules, 2017 i.e SBI highest marginal cost of lending rate plus 2%. Said amount works out to ₹41,040/- per month.

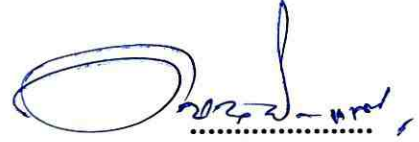




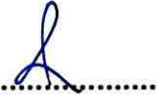
7. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



.....  
**RAJAN GUPTA**  
**[CHAIRMAN]**



.....  
**ANIL KUMAR PANWAR**  
**[MEMBER]**



.....  
**DILBAG SINGH SIHAG**  
**[MEMBER]**

