



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: 03.08.2021

Hearing: 12th

Present: -

Mr. O.P. Gupta, counsel for the complainant through video conference

Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (RAJAN GUPTA - CHAIRMAN)

1. The matter was heard at length on 30.03.2021 and a detailed order was passed by Authority considering all the written and oral contentions

of both the parties had given certain directions. Operative part of said order is reproduced here for ready reference:

“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.

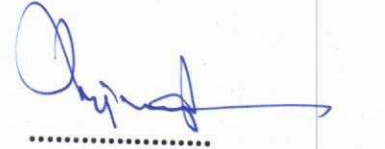
(vi) The plea of the respondent is that they have already paid an amount of ₹11,76,362/- (including the amount of demand draft today prepared) which is 50% of the total amount payable. The Authority decides to grant a short adjournment upto 15.04.2021 to enable the respondent to pay the remaining decreed 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.”

2. Learned counsel for the respondent stated that in compliance of the order dated 04.10.2020, payment of entire delay interest of ₹23,52,723/- has already been made to the complainant on 14.04.2021 and has reiterated its stand that the plot on which the villa was allotted to the complainant has come under road due to which respondent company is not able to handover possession of the said villa at present and will not be able to do even in future as the land has been acquired by the State Government for the purpose of road. Therefore, instead of granting relief of possession, refund may be allowed in favour of the complainant.

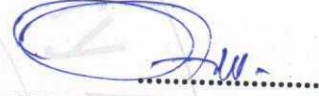
3. In view of above, Authority observes that for proper adjudication of the matter, respondent shall submit with the Authority original sectoral plan

and revised sectoral plan of the project depicting therein that the villa allotted to complainant has come under road and is now not available to be offered to her. Copy of same shall also be sent to the complainant.

4. Adjourned to 14.09.2021 with a direction to respondent to pay earlier imposed penalty of ₹25,000/- and cost of ₹5,000/- to the Authority and cost of ₹2,000/- to the complainant on or before next date of hearing.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SIHAG
[MEMBER]

