



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 677 OF 2021

Kiran Khyalia & Anr.

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 25.08.2021

Hearing: 1st

Present: -

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

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

Ms. Isha, proxy counsel for the respondent

ORDER (ANIL KUMAR PNWAR - MEMBER)

1. Present complaint has been filed for execution of order dated 31.03.2021 passed in favour of complainants in complaint no. 526 of 2020 titled Kiran Khyalia & Anr. versus M/s Parsvnath Developers Ltd. whereby

respondent was directed to pay the complainants interest of ₹33,36,525/- within forty five days and further pay 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 worked out to ₹41,040/- per month.

2. The respondent having not complied with the order under execution, a notice was issued to him to ascertain the feasibility of initiating action under Section 63 of RERA Act. Proxy counsel for the respondent has today filed reply in Court said notice.

3. Initiating her arguments, learned counsel for the respondent has argued that provisions of Section 63 can't be invoked for recovery of the amount payable under an order of the Authority. Rather, execution of Authority's order can be made only by adopting the means as contemplated in Section 40 of the Act.

4. The Authority for the purpose of scrutinising this argument deems it proper to quote the above referred sections which read as under:

“Section 40: Recovery of interest or penalty or compensation and enforcement of order, etc.

(1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

(2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs

any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.”

“Section 63: Penalty for failure to comply with orders of Authority by promoter.

If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.”


5. Above provisions evidently reveals that Section 40 and Section 63 serve two different purposes. Section 40 enshrines a procedure for recovery of the amount which is payable by a party in terms of an order passed by the Authority against such party. Section 63 on the other hand deals with the powers which the Authority can exercise in appropriate cases for imposing penalty upon a party who is neglecting to comply with its order. Significantly, Section 63 nowhere provides that the provisions contained therein can be invoked only in respect of a specific kind of order passed by the Authority. Rather, the use of expression 'any order' in Section 63 eloquently manifests that the Authority irrespective of adopting the means provided in Section 40, has jurisdiction to impose penalty under Section 63 on a promoter who fails to comply with any of its order.

6. Moreover, the RERA Act constitutes a benevolent legislation aimed at expeditious redressal of grievances of allottees so much so the

Authority and even the Adjudicating Officer in terms of the mandate of Section 29 and Section 71 of the Act are obliged to dispose of a pending complaints within 60 days. The provisions of Section 63 thus have to be construed as an additional means provided to the Authority for disposal of complaints against a promoter showing defiance to the orders or directions passed in favour of the allottees. So, the Authority doesn't find any merit in the contention that the show cause notice issued to the respondent under Section 63 is liable to be discharged simply because the implementation of order under execution can be carried out with the aid of Section 40 of the Act.

7. For the reasons recorded above, the respondent is now granted last opportunity to pay the outstanding amount to the complainants within fifteen days failing which Authority will be constrained to attach the bank account of the respondent company as per the details mentioned in the complaint as also to initiate proceedings for imposing penalty under Section 63 of the Act.

8. Adjourned to 21.09.2021.


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ANIL KUMAR PANWAR
[MEMBER]


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DILBAG SINGH SIHAG
[MEMBER]