



**HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA**

Website: www.haryanarera.gov.in

**COMPLAINT NO. 2686 OF 2019**

Sudesh Sharma

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

**CORAM:**

**Anil Kumar Panwar  
Dilbag Singh Sihag**

**Member  
Member**

**Date of Hearing:** 08.09.2021

**Hearing:**

12<sup>th</sup>

**Present: -**

Mr. R.C. Sharma, counsel for the complainant through video conference

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

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

1. The Authority in its order dated 20.04.2021 had discussed factual matrix of the case and observed that complainant is entitled for award of delay interest on the amount already paid to respondent from 10.03.2018 to the date

on which valid offer of possession will be made to her. Relevant extract of said order is reproduced as under:

“1. Facts of the complainant’s case are that complainant Sudesh Sharma is deriving her rights through Mr. Pawan Gupta who had booked a flat bearing no. T1-101 having area of 1780 sq. ft. in respondent’s project namely ‘Parsavnath Royale, Sector-20, Panchkula’ on 15.11.2010. Flat buyer agreement was executed between original allottee Pawan Gupta and respondent on 25.01.2011. Subsequently, said unit got transferred to Mr. Munish Jindal and thereafter allotment rights were again transferred to another customer-allottee, Mr. Khushi Ram vide endorsement dated 20.10.2015 and lastly the allotment rights were endorsed in the name of present complainant on 10.03.2018.

2. It has been mentioned in the complaint that offer of fit outs was sent to third allottee Mr. Khushi Ram vide letter dated 20.07.2017 and respondent offered rebate of ₹4,25,000/- in lieu of finishing work like flooring, kitchen fittings, glass fixing, A.C piping, internal doors, sanitary fittings, electric work, internal and external painting etc. It is alleged that complainant took possession for fit outs and completed internal work on the assurances given by respondent that he is in process of obtaining occupation certificate but same has not been received till date. As per statement of accounts dated 24.05.2019 issued by the respondent and no due certificate dated 31.01.2018 issued to Mr. Khushi Ram, complainant and his predecessor-in-interest had already paid the whole amount to the respondent against basic sale price of ₹57,85,000/-. It has been alleged that after taking possession of the flat complainant came to know that there exist certain deficiencies in the flat and external works of the project were also not complete. So, present complaint has been filed for removal of deficiencies and obtaining Occupation Certificate by respondent. Complainant has prayed that in case respondent fails to obtain the Occupation Certificate and execute conveyance deed in her favour, respondent may be directed to refund the amount of ₹75,42,003/- which also includes the amount spent on fit outs.

3. Respondent in his written reply has submitted that physical possession of flat for fit out purpose has already been handed over to third allottee Mr. Khushi Ram, who accepted the same and availed rebate in the final dues. Complainant then

purchased the flat from Mr. Khushi Ram vide agreement dated 23.02.2018 and endorsement in her favour was made on 10.03.2018 and it was also accepted by the complainant on 'as and where basis'. Even more, while issuing final statement of account dated 29.07.2017, delay compensation ₹1,78,000/- has been credited in favour of Mr. Khushi Ram. So, now complainant is barred from claiming any further delay compensation for the reason that as per clause 5 affidavit dated 23.02.2018 executed by the complainant, complainant has agreed that she shall not be entitled to receive any penalty/ compensation in case of delay, if any, prior to the date of endorsement of said agreement. Said clause is reproduced here for reference:

“5. That I/we shall not be entitled to receive any penalty/compensation in case of delay, if any, in the construction/offer of physical possession of the said Plot/Flat/Shop to me in terms of the said Agreement for the period of delay, if any, prior to the date of endorsement of the said Agreement in my/our favour. I/We shall be entitled to receive such penalty/compensation for the period of delay, if any, caused after the date of endorsement of the said Agreement in my/our favour.”

4. Vide order dated 04.03.2021, complainant was directed to prove as to how her claim for rectification of deficiencies is maintainable after receiving a special rebate of ₹4,25,000/- from the respondent and respondent was directed to prove as to why delay interest is not payable to the complainant. In response learned counsel for the complainant today argued that rebate was given to the complainant in lieu of finishing internal works like flooring, kitchen fittings, glass fixing, A.C piping, internal doors, sanitary fittings, electric work, internal and external painting etc. Said works have been completed by the complainant. However, several deficiencies existing in the project are not in the scope of works to be completed by the complainant and are rather to be rectified by respondent only. He further argued that list of deficiencies still existing in the project has already been filed by him on 09.11.2020.

5. On the other hand, learned counsel for the respondent argued that the deficiencies pointed out by the complainant relates to the entire project and will be rectified as and when project is completed in terms of registration granted by the HRERA Authority, Panchkula. She further argued that the Authority does not have jurisdiction to award delay interest in view of the 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.

6. The Authority has gone through the rival contentions of the parties and has perused the documents placed on record. First of all, to deal with question of jurisdiction posed by learned counsel for the respondent, Authority observes that the matter pending adjudication before Hon'ble Supreme Court is with to regard to jurisdiction of Authority in refund matters and not in regard to power of the Authority to award delay interest. The plea regarding lack of jurisdiction to award delay interest is therefore rejected. The Authority has already expressed its views that mere offer of possession given to the complainant on 'fit out basis' without the apartment being actually in a habitable condition cannot be called a legal and proper possession. The implications of offering a legal and proper possession are that from date such a legal possession is offered, claim of the complainants to seek interest on account of further delay caused will cease to be admissible. An offer of possession can be called legal and proper possession only when the apartment is complete in all respects and is possible to be occupied and enjoyed by the allottees. It also pre-supposes that all the services are functional and certified to be so. Further, the functionality of the services gets certified only upon receipt of the occupation certificate from the relevant department.

7. In the instant case even though the apartment has been handed over on 'fit out basis', still admittedly the services are yet to be linked with the general services of the project. Occupation Certificate is also yet to be obtained. In the circumstances, the Authority arrives at a conclusion that the apartment is still not in a habitable condition, therefore, claim for delay interest from 10.03.2018 till a proper and legal possession is handed over cannot be denied. Both parties are directed to submit their calculation of admissible interest payable upto 31<sup>st</sup> of May, 2021 as per Rule 15 of HRERA Rules, 2017 and further the monthly interest payable till the occupation certificate is received. The Authority will order the quantum of interest to be paid to the complainant on the next date of hearing after receiving the respective calculations.

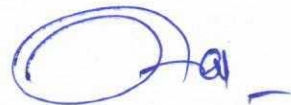
8. The only question now left to be determined is with regard to the rectification of deficiencies being claimed by the complainant. The Authority prima facie observes that the deficiencies being pointed out by the complainant are mostly related to the deficiencies in the infrastructure of the project

which will be rectified when the project is fully completed. However, if the complainant alleges that there are certain deficiencies which are related to her flat only, she may file list of those deficiencies along with details and proof. She may apply for appointment of Local Commissioner to determine the deficiencies in the flat. The expenses to be incurred in the appointment of Local Commissioner shall be initially borne by the complainant, however, if it is revealed in the report of Local Commissioner that deficiencies actually exist in the flat, expenses of Local Commissioner shall be borne by the respondent.

9. With these directions, case is adjourned to 22.07.2021.”

2. In compliance of above order, the complainant had submitted her calculations. However, learned counsel for the respondent has not filed her calculations and has rather reiterated her earlier contention that Authority does not have jurisdiction to award delay interest in view of the 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 & Ors. Needless to mention that the Authority had already rejected this argument vide order reproduced above and no further discussion on that point is now legally permissible.

3. The Authority should now proceed to decide the respective arguments of the parties about the rate at which delay interest needs to be calculated. The complainant's argument is that she is entitled for interest at the rate prescribed in Rule 15 of the HRERA Rules. Respondent's argument on the other hand is that the delay interest is payable only at the rate stipulated in BBA. Respondent's argument is not acceptable for the reasons already spelt out in majority judgement of the Authority rendered in another case of the



respondent bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt. Ltd. decided on 16.07.2018. The dictum of said judgement, per view expressed by majority members, is that in a case where exists a disparity in the BBA about rate of interest chargeable from the builder and the allottee for defaults in discharge of their respective obligations towards each other, the the builder as well as the allottee are liable to pay interest as per Rule 15 of HRERA Rules, 2017 for default in discharge of their respective obligations for the period prior to coming into force of RERA Act,2016 and also for the period after coming into force of RERA Act,2016.

4. Adopting the aforesaid principle of Madhu Sareen's case, the Authority holds that the complainant is entitled for payment of delay interest at the rate prescribed in Rule 15 of RERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to 9.30% (7.30% + 2.00%).

5. The complainant per customer ledger dated 18.02.2020 annexed by respondent as Annexure R-9 has paid total amount of ₹69,67,003/- which includes even the amount of ₹21,360/- for EDC, ₹49,128/- IDC, ₹57,705/- for VAT, ₹1,98,933/- for service tax, ₹98,136/- for GST, ₹1,78,000/- as delay compensation paid to complainant, ₹13,700/- received form complainant as interest and ₹4,25,000/- rebate for unfinished items. The amount of EDC/IDC, VAT, services tax and GST is collected by the promoter for payment to the department/authorities entitled to receive it for carrying their statutory obligations. If a builder does not pass on this amount to the concerned

departments, then interest becomes payable to the department or authority concerned and the defaulting builder in such eventuality will himself be liable to bear the burden of interest. A builder is, therefore, not liable to pay delay interest to the allottee on the amounts collected for passing over to other department/authorities concerned. Further, the amount of delay compensation paid to the complainant and rebate given to her for unfinished items cannot be considered for purpose of calculating delay interest as these amounts were never actually paid by the complainant through otherwise credited in her account. The delay interest accordingly deserves to be calculated only on amount of ₹59,25,041/- (₹69,67,003 - ₹10,41,962).

6. The Authority got the delay interest calculated from its Account branch on ₹59,25,041/- for the period ranging from 10.03.2018 till date of this order (08.09.2021) in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2% (9.30%). Such interest works out to ₹19,29,355/- and it is held payable by the respondent to the complainant. For further delay occurring after the date of this order, the respondent is liable to pay monthly interest of ₹45,919/- to complainant commencing from 09.10.2021 till valid offer of possession is made to her after obtaining occupation certificate.

Respondent is directed to pay the amount of delay interest of ₹19,29,355/- within 90 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest of ₹45,919/- will commence w.e.f. 09.10.2021 and it shall be paid on monthly basis till

valid offer of possession is made to complainant after obtaining occupation certificate.

7. In the above terms, case is **disposed of** and the file be consigned to the record room after uploading the order on the website of the Authority.

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

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

