



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 97 OF 2020

Saroj Gupta

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 98 OF 2020

Ram Niwas Gupta

....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: 03.08.2021

Hearing:

8th

Present: -

Mr. Amit Gupta, counsel for the complainants through video conference

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

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Captioned complaints are taken up together as grievances involved are similar and are directed against the same project of the respondent. Factual matrix and documents will be discussed on the basis of averments and record of complaint case no. 97 of 2020 titled Saroj Gupta versus M/s Parsvnath Developers Ltd. which is treated as lead case.

2. Present complaints were heard at length on 05.08.2020 whereby after hearing the parties, Authority had prima facie observed that said complaints are not maintainable. However, an opportunity was given to the complainants to prove maintainability of the complaints. Said order is reproduced here for ready reference:

“1. In the present case, the complainant purchased a plot from Mr. Anwer Hassan, the original allottee, who had booked it in the year 2005 in project named ‘Parsvnath City, Sonipat’ developed by the respondent. The transfer and endorsement in favour of the complainant was made in January 2007. The respondent was under an obligation to deliver the possession of the plot by April 2008 as per the plot buyer agreement dated 11.06.2007 executed between them. However, offer of possession was made on 18.09.2017 and the conveyance deed was executed on 30.09.2019. Accordingly, there is a delay of about 9 years in offering the possession and respondent has not compensated for the said period. Therefore, he has filed the present complaint seeking delay compensation for the delay caused in offering possession

2. Short reply has already been filed by the respondent stating that the complainant has misdirected himself in filing the present complaint for compensation before Hon’ble Authority and the same be dismissed.

3. After perusing the written pleadings of the parties, the Authority observes that the complainant has filed the present complaint for delay compensation after taking the possession and execution of conveyance deed. The Authority is prima facie of the opinion that once conveyance deed has been executed, the relationship between the parties comes to an end and the contract concludes. Therefore, the present complaint is not maintainable. However, an opportunity is being given to the complainant to satisfy the Authority on next date of hearing on the question of maintainability of present complaint.

No further opportunity will be provided to the parties to address the Authority on the above posed question and in case a party finds difficulty in putting in personal appearance on the next date of hearing, such party will be at liberty to file written arguments in the matter or else the Authority will decide the matter on merits on the basis of material already available on record.

4. Case is adjourned to 22.09.2020."

3. On 04.02.2021, learned counsel for the complainant produced certain judgments of higher courts to support his contention that present complaints are maintainable. None was present on behalf of respondent, so case was adjourned for arguments of respondent. Relevant part of order dated 04.02.2021 is reproduced for ready reference:

"2. Learned counsel for the complainant has today cited judgment dated 24.08.2020 of Hon'ble Supreme Court in civil appeal no. 6239 of 019 titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Pvt. Ltd. wherein Hon'ble Supreme Court has ruled that it would be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. He further stated that although conveyance deed has been executed but the present complaint has been filed within 1-2 months of the



execution of said deed. So, he may be granted delay interest for delay caused by the respondent in handing over the possession.”

4. The matter was heard again today. Learned counsel for the complainant argued that in light of judgment rendered Hon'ble Supreme Court in civil appeal no. 6239 of 019 titled Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Others vs. DLF Southern Homes Pvt. Ltd., respondent shall be directed to pay the complainant interest for delay in handing over the possession. He further argued that respondent is charging maintenance charges from the complainants which he shall be directed to charge only after completion certificate is received by him and he shall be directed to refund all the maintenance charges already collected by him.

5. On the other hand, learned counsel for the respondent argued that conveyance deeds had already been executed between the parties and now the complainants have no locus standii to file present complaints for the reason that after the execution of conveyance deed, mutual obligations of both the parties stood discharged. So, she has prayed for dismissal of said complaints.

Respondent has also filed written submissions today contending that as per policy instructions dated 08.07.2015 issued by DTCP, Haryana, promoter is entitled to offer possession of units immediately after completion of development works and it need not wait for issuance of completion certificate which in the present case respondent has duly offered and complainants have



taken the possession of the plots. With regard to maintenance charges, it has been pleaded that the complainants have executed separate maintenance agreements under which no such relief has been prayed by the complainants. In support of his contentions, respondent has also cited judgment dated 18.09.2008 of Hon'ble Supreme Court in civil appeal no. 5733 of 2008 titled National Insurance Company Ltd. versus Bhogara Polyfab Pvt. Ltd. Further, it has been contended by respondent that judgment dated 24.08.2020 rendered by learned counsel for the complainant is distinguishable from the facts and circumstances of the present complaints. In said judgment there was clear coercion on the part of developer into getting the complainants to execute the conveyance deeds. However, in present complaints conveyance deeds were executed by free will of the complainants and except bald assertions, no document or any material has been placed on record to question the circumstances leading to execution of conveyance deeds. It has been further contended that at the time of allotment, the rate of plots was ₹3,100/- per sq. yard and presently it is ₹20,000/- to ₹25,000/- per sq. yard.

6. After hearing the contentions of both the parties and going through documents on record, it is observed that the complainants have already taken possession of the plots and got conveyance deeds executed in their names on 30.09.2019. They should have pressed for the amount of delay compensation at the time of execution of conveyance deeds. However, by

omitting to do so, they cannot be allowed to seek delay compensation at this stage by approaching this Authority. As of today, contractual obligations between the parties stands discharged. Accordingly, the disputes arising between them in respect to relief of delay interest and maintenance charges cannot be entertained by this Authority. Hence, these complaints are dismissed.

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


.....
RAJAN GUPTA
[CHAIRMAN]

Separate order appended.


.....
ANIL KUMAR PANWAR
[MEMBER]


.....
DILBAG SINGH SIHAG
[MEMBER]

Mere fact that the complainants got the conveyance deed executed in their favour, in the opinion of the undersigned Member, will neither dis-entitle nor forfeit complainants right to claim delay interest unless the contents of conveyance deed indicate that the matter between the parties with regard to delay interest was settled by the parties. Else, the complainants will be entitled to approach the competent court for recovery of delay interest subject to, of course, law of limitation.

2. It is nowhere the case of respondent that the complainants' claim for delay interest was satisfied on payment of some specific amount or the complainants had agreed to waive their right for delay interest, at the time of execution of conveyance deed. Not even an inference to that effect can be drawn from the contents of conveyance deed. The allottee, per dictum of Wg. Cdr. Arifur Rahman's case, need not indefinitely defer obtaining of conveyance deed and if he has obtained a deed of conveyance, it cannot be reasonably concluded that such allottee forsakes his right to claim delay interest.

3. The undersigned member further finds support in this regard from a decision of Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh in Appeal no. 273 of 2019 titled Mrs. Manju Arya versus M/s TDI Infrastructure Ltd. decided on 19.01.2021 wherein the Hon'ble Tribunal in para 23 of the judgment has observed as under:



“.....Thus, we are of the considered opinion that mere execution of the conveyance deed by the respondent/promoter qua plot no. 663, Block no. L, TDI City at Kundli, Sonipat, Haryana (Complaint No. 718/2018, Appeal No. 273/2019) will not extinguish the right of the appellant/allottee to claim the compensation which had already accrued to her much before the execution of the conveyance deed.”

4. The parties in these cases have entered into builder buyer agreements on 11.06.2007. Therefore, it can be reasonably concluded that the possession of the plot was required to be delivered within a reasonable period of three years from the date of said agreement. The deemed date of possession thus works out to be 10.06.2010. So, the undersigned Member will hold that the present complaints are maintainable and complainants are entitled to delay interest from June 2010 to the dates they were offered the possession of the purchased plots. Such interest is payable 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%), as held in Madhu Sareen's case bearing complaint no. 113 of 2018 decided by the Authority on 16.07.2018.

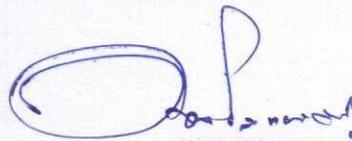
5. Complainants in their pleadings have not specified the exact amounts paid to respondent but have filed receipts which reflect payment of ₹9,21,444/- in complaint no. 97 of 2020 towards sale consideration. However, the sale consideration paid to the respondent in the conveyance deed annexed as Annexure P-10 is mentioned as ₹7,77,062/-. Similarly, in complaint no. 98 of 2020, the total amount paid as reflected by receipts is ₹7,40,175/-.

However, the sale consideration paid to the respondent in the conveyance deed annexed as Annexure P-10 is mentioned as ₹6,22,907/-.

Difference in the amount shown paid by receipts and the amount shown paid in sale deed would imply that some amount in the receipts was mentioned in respect of components which were not forming part of the sale consideration such as EDC or taxes payable to government departments. Since the interest payable on account of delay in delivery of possession deserves to be calculated only on the amount paid towards sale considerations, the Authority got the delay interest calculated from its Account branch on ₹7,77,062/- in complaint no. 97 of 2020 and ₹6,22,907/- in complaint no. 98 of 2020 for the period ranging from 10.06.2010 till date of offer of possession (18.09.2017) in terms of Rule 15 of HRERA Rules, 2017 i.e. SBI MCLR + 2% (9.30%). Such interest works out to ₹5,25,864/- and ₹4,21,542/- in complaint nos. 97 of 2020 and 98 of 2020 respectively and it is held payable by the respondent to the complainants.

Respondent is directed to pay the amount of above mentioned delay interest within 90 days of uploading of this order on the website of the Authority.

6. **Disposed of.** Files be consigned to record room and orders be uploaded on the website of the Authority.


ANIL KUMAR PANWAR
[MEMBER]