



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 07 OF 2021

Manmeet Singh & Anr.

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 08 OF 2021

Gagandeep Singh Sodhi

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 10 OF 2021

Simranjit Singh Gujral

....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: 17.08.2021

Hearing: 3rd (in all complaints)

Present: - Mr. Vikas Deep, learned 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. 07 of 2021 titled Manmeet Singh versus M/s Parsvnath Developers Ltd. which is treated as lead case.
2. An application has been filed in complaint case no. 10 of 2021 on 22.07.2021 for impleading legal heir of Jit Kaur Gujral who was complainant in this case and has since expired. The application is supported by an affidavit averring that Simranjit Singh Gujral is the only legal heir of the deceased. In view of the affidavit, the Authority allows the application and impleads Shri Simranjit Singh Gujral as the legal heir of deceased Jit Kaur Gujral.
3. Complainants case is that in the year 2008 they had booked a flat bearing no. T6-1206 in a project named 'Parsvnath Preston, Sonapat' being developed by the respondent by paying booking amount of ₹1,49,558/-. Further, a sum of ₹2,99,117/- was paid by the complainants on 22.11.2008 on a demand being made by respondent vide letter dated 03.10.2008. Despite

receiving a sum of ₹4,48,675/- from the complainants, respondent did not initiate the development of the unit in question. On being enquired, respondent offered the complainants that in case he wishes to get a shop booked in respondent's commercial project named 'Parsvnath Mall', at the same integrated township i.e 'Parsvnath City, Sonepat', the amount already deposited in the aforesaid booking shall be adjusted and transferred. Complainants visited location of Parsvnath Mall and found that the construction work was under progress. So, considering the offer made by respondent, complainants got booked shop bearing no. FF-116 in 'Parsvnath Mall' with verbal assurance that possession would be handed over within 30 months from the date of booking. Resultantly, vide application form dated 29.06.2010, complainants booked shop measuring 662 sq ft. at basic sale price of ₹29,87,275/- against which has paid a sum of ₹5,48,675/- till date. As per shop buyer agreement executed between the parties on 05.12.2011, respondent was under an obligation to hand over possession of shop within 30 months with grace period of 6 months. i.e. by 04.12.2014. It has been alleged in complaint that respondent forwarded the shop buyer agreement to the complainant without giving any opportunity to him to negotiate the terms. Since, huge amount was paid by complainants, he had no option but to sign the agreement, thereafter, complainants came to know that construction and development work at the Mall had stopped and respondent neither made any communication nor raised any further demand. In these circumstances,

complainants served letters dated 09.08.2012, 23.04.2014 and 19.10.2015 to respondent and requested him to hand over possession of the shop with delay interest but there was not response from respondent. Complainants then filed consumer complaint no. 1241 of 2015 before Hon'ble State Consumer Disputes Redressal Commission, New Delhi. Despite lapse of several years from the deemed date of possession, respondent has not given possession of booked shop to the complainants and project is still incomplete. Now, present complaint has been filed seeking possession of booked shop along with interest for delay caused in handing over the possession till possession is actually offered.

4. Learned counsel for the complainants stated that above said consumer complaint has been withdrawn on 19.03.2021. He argued that project is at its initial stage and respondent has abandoned the project since many years. There has been unreasonable delay on part of respondent to complete the project and hand over the possession, therefore complainants may be awarded upfront delay interest.

5. Respondent has filed its reply on 15.04.2021 admitting the payments made by the complainants but has disputed the right of complainants to file the present complaint on the ground that they have already filed consumer complaint before Hon'ble State Consumer Disputes Redressal Commission, New Delhi. It has been further averred that project has been registered with Authority vide registration no. 141 of 2017 and there is no

intentional delay on part of respondent and delay has been caused for reasons beyond the control of respondent company. Another reply has been filed on 30.07.2021 stating that present complaint is not maintainable and is liable to be dismissed for the reason that consumer complaint is already pending. Further, an application dated 02.03.2021 has also been filed under Section 71(1) of RERA Act for rejection of complaint on the above said ground.

6. Learned counsel for the respondent argued that Authority does not have jurisdiction to award delay interest in view of stay granted by Hon'ble Supreme Court in SLP no. 13005 of 2020 titled M/s Sana Realtors Pvt. Ltd. vs Union of India and Ors. Further, she stated that respondent is facing many difficulties in streamlining the project and admitted that project is nowhere near completion. She stated that the project is unlikely to be completed in near future and respondent will be unable to deliver possession to allottees in coming years. However, she sought time to settle the matters.
7. After hearing arguments of both parties and perusing documents on record, first of all, to deal with question of jurisdiction posed by learned counsel for the respondent, Authority observes that the matter which is pending adjudication before Hon'ble Supreme Court is in regard to jurisdiction of Authority in refund matters and not in regard to power of the Authority to give possession and to award delay interest. The Authority has undisputed jurisdiction to deal with matters relating to handing over of possession along with award of delay interest. The plea of lack of jurisdiction

to award delay interest is therefore rejected. Further, in regard to maintainability of present complaints, learned counsel for the complainants has today informed that complaints pending before Hon'ble State Commission have been withdrawn, therefore present complaints are maintainable.

Authority observes that complainants have sought relief of possession of booked shops along with interest on account of delay by the respondent to deliver possession on the agreed date. Although the project is not complete and does not seem likely to be completed in near future but the complainants are not interested in withdrawing from the project, despite delay on the part of the respondent in completing the project. Therefore, the only relief which at present can be awarded to them is to direct the promoter to pay upfront interest for delay along with payment of every monthly delay interest till the handing over of possession as provided in Section 18 of RERA Act, 2016 or till the date respondent surrenders the licence received by him and informs DTCP to cancel his licence and take over the project, whichever is earlier.

8. The Authority now proceeds to decide on the respective arguments of the parties about rate at which delay interest should be calculated. The complainant's argument is that she is entitled to 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 the BBA. Said argument of the respondent is not acceptable for the reasons already spelt out in majority judgement of the Authority rendered in case

bearing no. 113/2018 titled as Madhu Sareen vs BPTP Pvt. Ltd. decided on 16.07.2018.

9. Adopting the principle of Madhu Sareen's case, the Authority holds that the complainants are entitled to 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%) and for further delay occurring after the date of this order, the respondent is liable to pay monthly interest to complainants till valid and legal possession is offered or till the date respondent surrenders his licence for the project in question, whichever is earlier.

10. Shop buyer agreements were executed between the parties on 05.12.2011 and 16.11.2007 in complaint nos. 07 of 2021 and 10 of 2021 respectively. So, deemed date of possession in said cases comes out to 04.12.2014 and 15.11.2010 respectively. However, no builder buyer agreement has been executed in complaint case no. 08 of 2021. In said case deemed date of possession can be reasonably presumed as three years with grace period of six months from date of submitting application form. Application form was submitted on 31.12.2007, so deemed date of possession in complaint case no. 08 of 2021 can be presumed as 30.06.2011.

11. The Authority has got admissible delay interest calculated from its Account branch. The details of amounts paid by the complainants and delay interest calculated on said amounts are shown in the following table:

S.No.	Complaint No.	Amount paid by complainant	Deemed date of possession	Upfront delay interest calculated by Authority till 17.08.2021	Further monthly interest
1.	07 of 2021	₹5,48,675/-	04.12.2014	₹3,42,089/-	₹4,252/-
2.	08 of 2021	₹6,81,100/-	30.06.2011	₹6,41,926/-	₹5,279/-
3.	10 of 2021	₹9,48,000/-	15.11.2010	₹9,48,306/-	₹7,347/-

Respondent is directed to pay upfront amount as shown in above table within 90 days of uploading of this order on the website of the Authority. The respondent's liability for paying monthly interest as shown in above table will commence w.e.f. 18.09.2021 and it shall be paid on monthly basis till valid offer of possession is made to complainants.

12. In above terms, cases are **disposed of**. Files be consigned to record room and order be uploaded on the website of the Authority.

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RAJAN GUPTA
[CHAIRMAN]

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ANIL KUMAR PANWAR
[MEMBER]

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DILBAG SINGH SIHAG
[MEMBER]