



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA
Website: www.haryanarera.gov.in

COMPLAINT NO. 730 OF 2020

Dr. Sukhvir Singh Rathi

....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:

5th

Present: -

Mr. Sushil Malhotra, learned counsel for the complainant through video conference

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

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Complainant Sukhvir Singh Rathi is deriving his rights through Anil Kumar who had booked a plot measuring 250 sq. yards in a project named 'Parsvnath City, Rohtak' being developed by respondent by paying booking amount of ₹2,00,000/- on 30.09.2009. Anil Kumar sold his booking rights in

the plot to Sonia Joon and present complainant Sukhvir Singh Rathi had subsequently purchased booking rights from Sonia Joon. The respondent had endorsed the transfer of booking rights in favour of complainant on 09.07.2012 on receipt of ₹15,000/- as administrative charges. It has been submitted that complainant and his predecessors-in-interest have already paid ₹2,15,000/- and is ready to pay the balance sale consideration. Complainant visited the office of the respondent company numerous times and letters dated 05.07.2018 and 13.07.2018 were sent to the respondent requesting them to allot the plot which he was obliged to allot within stipulated time period but was always returned with false assurances. Complainant even made representation before learned Deputy Commissioner for his intervention. On 05.12.2019, complainant filed an objection to revision of layout plans of the project to DTCP, Haryana to which respondent replied that he will allot the plot to the complainant after receiving HRERA Registration Certificate. But no plot has been allotted to him till date. Therefore, present complaint has been filed seeking allotment of the plot booked by the complainant.

2. Respondent filed its reply on 22.02.2021 taking preliminary objection that claim of the complainant is barred by limitation. Respondent has not disputed the booking of 250 sq. yards plot by original applicant Anil Kumar and subsequent transfer of booking rights firstly, to Sonia Joon and then to present complainant. He has also admitted that endorsement in favour of complainant was made on 09.07.2012 and that he has already received a



sum of ₹2,15,000/- from the complainant and his predecessors-in-interest. The respondent has however disputed the complainant's right to the allotment of plot as according to him, the original applicant applied for advance registration of a plot admeasuring 250 sq. yards in upcoming project of the respondent company by depositing a sum of ₹2,00,000/- . Location, number and site of the plot was not confirmed and moreover original applicant while filling the application form had given an undertaking that in case no allotment is made, he shall accept refund of the advance deposit. Relevant clause of application form is reproduced below for ready reference:

“(f) Though the company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

Since, neither any allotment has been made nor any agreement has been executed between the parties, complainant is bound by terms of application form and as per above said clause (f) shall accept refund of the advance paid along with interest @10% p.a. It has been pleaded that the present complainant is bound by the above referred condition because he had also executed a document in the form of an 'affidavit-cum-undertaking and indemnity' at the time of seeking transfer of booking rights in his favour and according to clause 7 of said undertaking complainant shall accept refund @9% p.a. in case no allotment is possible. It has been further contended that respondent has never raised any demand after 2009 against the complainant which establishes the



fact that the registration was mere an expression of interest towards the future project of the respondent.

3. Learned counsel for the complainant argued that respondent has illegally kept the money of the complainant for such a long period of 11 years and had failed to allot any plot to the complainant. He further argued that complainant never denied making further payments for the booked plot but respondent neither issued allotment letter or possession of the plot nor made any communication in this regard. Therefore, he requested that complainant should be given possession of the plot along with interest for delay caused in handing over the possession.

4. On the other hand, first and foremost argument of learned counsel for the respondent is that complainant had booked the plot in future projects of respondent and no project was specified in the application form. Secondly, no formal allotment was ever made in favour of the complainant or even promised to him, meaning thereby he is not an allottee of the project. Thirdly, as per 'affidavit-cum-undertaking and indemnity' given by complainant he should accept refund as the respondent is ready to refund the amount along with interest.

5. Considering written and verbal pleading of both the parties, Authority finds that original applicant had booked the plot in the year 2009 by depositing earnest money of ₹2,00,000/- and subsequently complainant purchased the booking rights in the year 2012. Thereafter, no demand was



ever raised by respondent, no allotment was made, no agreement was executed nor any payment was made by the complainant. Whereas in all other similarly placed cases, almost entire payment has been received by respondent. Moreover, in the present case there is no record of any communication between the parties from the year 2012 to 2018. Merely because certain sum was deposited with the respondent by complainant in respect of future projects, that doesn't make him an allottee of the project unless allotment was made in his favour of a specific unit in a specific project. Therefore, it is clearly established that complainant is not an allottee of the project and his claim for possession after 11 years of booking is time barred. However, there is no dispute to the fact that he had deposited a sum of ₹2,15,000/- with the respondent who was under an obligation to allot the plot to the complainant and if for any reason he could not allot the plot, he should have exercised the option of refunding the paid amount along with interest. Instead respondent kept with him and utilized the money of the complainant for nearly 11 years. Therefore, complainant can't be made to suffer because of the wrong done by the respondent and money deposited him shall be returned back to him along with interest.

6. Hence, Authority directs the respondent to return to the complainant the sum of ₹2,15,000/- along with interest calculated as per provisions of Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending + 2% from



the date amount was paid till actual realization of said amount. In view of this total amount payable to the complainant including interest calculated till today amounts to ₹4,48,716/- (₹2,15,000/- + ₹2,33,716/-).

Respondent is further directed that fifty percent of the total sum payable to the complainant shall be paid within 45 days from the date of uploading of this order and the remaining fifty percent in next 45 days.

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



RAJAN GUPTA
[CHAIRMAN]

Separate order attached



ANIL KUMAR PANWAR
[MEMBER]



सत्यमेव जयते

DILBAG SINGH SIHAG
[MEMBER]

1. The record of this case reveals that respondent had collected ₹2 lac as booking amount from Sh. Anil Kumar S/o Shri Sukh Lal in the year 2009 for a plot in his present and future projects and had issued a receipt in token thereof, which is attached as Annexure C-3 with the complaint.
2. There is then a document attached as Annexure R-1 with respondent's reply revealing that Anil Kumar by paying the above mentioned amount had booked a residential plot measuring 250 sq. yards in respondent's project and booking amount was paid through a cheque/draft bearing no. 112000 dated 22.09.2009. The respondent has not denied the payment of ₹2 lac.
3. Conjoint reading of three receipts, Annexure C-3, C-4 and C-5 issued by the respondent, proves that Anil Kumar who paid ₹2 lac to the respondent had transferred his rights in favour of Sonia Joon and the respondent had approved the transfer of such rights in favour of Sonia Joon by making endorsement dated 09.01.2010 on the reverse side of Annexure C-3. The respondent had charged ₹15,000/- as administrative fee from Sonia Joon vide receipt Annexure C-4. It is pertinent to notice that the respondent in the receipt Annexure C-4 has mentioned that the charges were being collected in respect of unit no. 130, Parsvnath City, Rohtak. When the respondent himself had mentioned in Annexure C-4 that the administrative fee was being collected for unit no. 130, Parsvnath City, Rohtak, how the



respondent then can be allowed to take a stand that Sonia Joon was not allottee of specific unit of his project.

4. The matter did not stop there. Sonia Joon had subsequently sold her rights to the present complainant and the respondent had endorsed such transfer of rights on 09.07.2012 vide Annexure C-5.

5. In the face of the facts and circumstances earlier mentioned, an evitable conclusion flows that the complainant is successor in interest of a plot bearing no. 130 situated in respondent's project named Parsvnath City, Rohtak.

6. It is well settled that oral agreements are permissible and enforceable in the court of law. So, mere fact that there is no builder buyer agreement ever executed between the parties in the present case, by itself, will neither cast any doubt nor even negate the complainant's status as allottee in respondent's project. The terms and conditions of oral contract can be inferred from the manner in which the concerned parties had been behaving towards each other and from other attending circumstances.

7. Undeniably, the respondent is promoter of Parsvanath City Rohtak and while issuing administrative fee receipt Annexure C-4, he had clearly indicated that fee was being collected in respect of a plot no. 130, Parsvnath City, Rohtak. So, it can be safely concluded that there exists a relationship of allottee and promoter between the parties.



8. Furthermore, it is evident from application Annexure R-1 that the predecessor-in-interest of the complainant had applied for allotment of 250 sq. yards plot at the rate of ₹5,550/- per sq. yard. Said application was accompanied by a cheque/draft for ₹2 lac and the fact that respondent had acknowledged the receipt of said amount while issuing receipt Annexure C-3, proves that the cheque was got encashed. So, it can be safely concluded that the parties had entered into a valid contract when the respondent had accepted the application Annexure R-1 of complainant's predecessor-in-interest for allotment of plot by his conduct in getting the amount of cheque encashed. The complainant subsequently became allottee of plot no. 130 in respondent's project Parsvanath City, Rohtak when the respondent had endorsed transfer rights in his favour of the plot for which he had earlier collected transfer fee from complainant's predecessor Sonia Joon.

9. Encashment of the cheque sent with application annexure R-1 will also prove that respondent had accepted the proposal of complainant's predecessor for allotment of a residential plot @ ₹5,550/- per sq. yard. The basic sale price of the booked plot measuring 250 sq. yards thus works out to ₹13,87,500/-.

10. In the aforesaid circumstances, it has to be necessarily held that the complainant is entitled for possession of plot no. 130, Parsvnath City, Rohtak on payment of balance sale price of ₹11,87,500/- (₹13,87,500 - ₹2,00,000/-) to the respondent alongwith other statutory charges such as EDC,

VAT and Service Tax etc., which shall be payable at the rate as charged from the other allottees of the Parsvnath City, Rohtak.

11. It is nowhere the respondent's case that the complainant at any point of time was asked to make further payment of sale consideration and he had refused to meet the said demand. Also, the respondent has nowhere averred that he had sent a valid offer of possession to the complainant and the complainant had refused to accept the same. If so, there is no scope to hold that the complainant's claim for possession is barred by limitation.

12. That apart, as a matter of fact, cause of action in favour of the complainant to initiate legal action for claiming possession would accrue only when his right to possession is denied by the respondent or when the complainant at a time when an occasion arose on his part to take possession has failed to occupy the allotted plot in any manner. It is nowhere the respondent's case that the project in which plot no. 130 situates had been granted completion/part completion certificate. So, the complainant of his own was not expected to contact the respondent for delivery of possession. Furthermore, the respondent has nowhere pleaded that the complainant at some point of time was asked to pay more money and his allotment was cancelled due to non payment of dues. So, it is not permissible from any perspective for this Authority to reject the complainant's claim for possession as time barred.



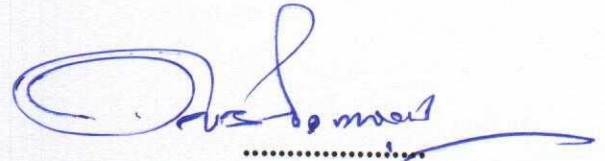
13. Clause 7 Affidavit cum Undertaking and Indemnity relied on by the respondent to defeat the complainant's right for possession reads as under:

“That I/we agree that if I/we are not allotted any plot in the Present & Future Projects, and then I/we will accept the refund of the deposited money with the Company along with simple interest @9% per annum from the date of acceptance of our nomination by the company.”

Above clause would have some relevance if no plot in any of the projects of the respondent was ever allotted to the complainant or his pre-decessor in interest. However, as earlier discussed, the respondent has itself mentioned in the receipt Annexure C-4 that the administrative fee was being charged in respect of plot no. 130 at Parsvnath City, Rohtak. When the respondent has given a specific plot no. in the receipt, how it can be said he has not allotted any plot in his project before the date on which the undertaking relied upon was signed by the complainant. If so, the undertaking which was applicable only in an eventuality when no plot was allotted, would have no significance at all and as such, can't, in any manner, affect the rights of the complainant in respect of plot no. 130 of Parsvnath City, Rohtak.

14. Resultantly, the complaint is allowed directing the respondent to deliver valid possession to the complainant of unit no. 130, Parsvnath City, Rohtak after on payment of balance sale consideration of ₹11,87,500/- plus statutory charges as charged from the other allottees of the Parsvnath City Project.

15. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.


ANIL KUMAR PANWAR
[MEMBER]

The dispute between the parties regarding allotment and possession of plot no. 130, Parsvnath City, Rohtak has been debated in detail by both learned counsel extending their pleadings with supporting documents. While deciding such disputed contentions of both parties, Authority has adopted certain principles laid down at the time of deciding a bunch of cases with lead case complaint no. 723 of 2019 titled Nishant Bansal versus M/s Parsvnath Developers Ltd. One of the principle in that decision was endorsement made in favour of complainant by respondent for transfer of booking rights. Second relevant evidence in this case is non-refund of the amount received from the complainant by the respondent promoter till the filing of this complaint for seeking possession of the plot. Thirdly, once a promoter has sought applications from general public for allotment of plots of his project by issuing brochure or prescribed application form alongwith certain amount of payment and said application form with payment of required amount had been accepted by the promoter, then such acceptance proves his willingness to allot a plot to complainant and same can be treated as legal evidence. Meaning thereby in

this case, application along with necessary payment of required amount of ₹2 lac had been accepted from the original applicant Sh. Anil Kumar. Moreover, respondent promoter had given administrative approval for transfer of entitlement from original applicant Sh. Anil Kumar to present complainant SH. J.S. Yadav.

2. Therefore, these facts are well established in this case for accepting the relief prayer of the complainant. It is pertinent to mention that proviso of Section 18 clause (1) and Section 19(4) give the sole right to the complainant to decide whether he intends to take possession of the plot/flat or seeks refund of his already deposited amount with delay interest as well as compensation.

In this case, complainant has already expressed his clear intention to stay in project and is asking for possession of the plot by paying outstanding dues against said plot as and when asked by the respondent. Therefore, relief prayer of complainant has a merit to be considered for allotment of possession of plot no. 130 at Parsvnath City, Rohtak.

3. In view of above evidence/facts, I undersigned fully endorse the findings of Hon'ble Member of Authority Sh. Anil Kumar Panwar and orders the respondent promoter to give possession of plot no. 130 at Parsvnath City, Rohtak to the complainant. Meanwhile the complainant is also directed to pay



the respondent entire balance sale consideration along with other statutory charges as and when being asked for the same by the respondent promoter.


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DILBAG SINGH SHAG
[MEMBER]

