



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 229 OF 2021

Ruchika Verma & Anr.

....COMPLAINANTS

VERSUS

Parsvnath Developers Ltd.

....RESPONDENTS

CORAM:

**Anil Kumar Panwar
Dilbag Singh Sihag**

**Member
Member**

Date of Hearing: 08.09.2021

Hearing: 4th

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

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

ORDER (DILBAG SINGH SIHAG - MEMBER)

1. While initiating his arguments, learned counsel for the complainant pleaded that complainants in the present case have sought possession of a flat bearing no. T1-401 admeasuring 1780 sq. ft. which was booked in the year 2013

in project named 'Parsvnath Royale, Panchkula' being developed by the respondent promoter. Complainants had already paid ₹36,13,705/- till 2014 against basic sale price of ₹73,38,050/-. As per flat buyer agreement executed between the parties on 06.09.2013, respondent was under an obligation to hand over possession of the flat by 06.09.2015, but he has miserably failed to do so even after lapse of six years. Nevertheless, a letter of offer for fit outs was issued by the respondent promoter on 29.07.2017 without completing the project. Respondent has committed several defaults and violations in the project such as constructing 344 flats without obtaining approval of revised building plan, including unauthorised area of 10 Kanal in flat buyer agreement, no provision of single entry and exit gated community and CCTV cameras and many others.

2. Learned counsel for the complainants stated that offer for fit outs is not acceptable to the complainants and they will take possession of the flat as and when Occupation certificate is received by respondent. He argued that it has been almost 8 years from the date of execution of flat buyer agreement and respondent has not been able to hand over the possession of flat till date. So, for the harassment caused to complainants, they may be awarded upfront payment of delay interest accrued till date along with monthly interest till possession is actually handed over to them after removal of all the defects, completion of work in all respect and receipt of Occupation Certificate.

3. On the other hand, respondent in his reply has admitted payment made by the complainants and has stated that complainants have purchased the flat for investment purpose solely rather than accommodation purpose after knowing completely the status of the project. It has been alleged that complainants have committed default in making payments of instalments. Complainants had been sent reminders regarding overdue payments, however they neither replied nor paid the overdue amounts to respondent. The complainant had been offered fit outs possession vide letter dated 29.09.2017 along with final statement of accounts in which ₹2,13,613/- has been credited to his account for delay caused in offering the possession and a rebate of ₹5 lac has been given on account of final finishing works. Further as per agreement executed between the parties, respondent is not liable to pay any interest or compensation to the complainants. With reference to violations alleged by complainant, it has been stated that there was some typographical error in the schedule of the agreement which showed certain additional land but the same was rectified vide corrigendum letter and complainant was informed about the same vide letter dated 07.02.2017. Further, as far as construction of 344 flats is concerned, it has been averred that revised building plans have been submitted with Competent Authority for its approval and only 12 additional flats have been constructed in three towers which are within the maximum permissible limit of FAR and are compoundable at the time of grant of Occupation Certificate of said towers. So far as status of project is concerned it has been

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stated that towers T1, T2, T3 and T4 are almost complete and possession has already been offered for fit out purposes and many families have taken possession of the same.

4. Learned counsel for the respondent further 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. However, she stated that respondent has already credited delay interest in the account of the complainants in the final statement of accounts issued by the respondent while offering possession on fit outs basis.

5. After hearing arguments of both parties and perusing documents on record, first of all, question of jurisdiction posed by learned counsel for the respondent is being addressed. Authority observes that the matter which is pending adjudication before Hon'ble Supreme Court is with 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. 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 does not hold any merit and is therefore rejected. The Authority has already expressed its views in several cases 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 with all necessary infrastructure and amenities. 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.

6. In the instant case even though the possession of the flat has been offered 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, Authority arrives at a conclusion that the apartment is still not in a habitable condition, therefore, claim for delay interest from deemed date of possession till a proper and legal possession is handed over cannot be denied.

7. Authority holds that the complainants are entitled to upfront payment of delay interest from deemed date of possession 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 complainant till valid and legal possession is offered to them after obtaining occupation certificate.


8. Complainants per customer ledger dated 29.07.2017 annexed at page -39 have paid total amount of ₹36,13,705/- which includes even the amount of ₹1,07,238.17/- for service tax. The amount of services tax 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 amount which has been collected for passing over to other department/authorities concerned. The delay interest accordingly deserves to be calculated only on amount of ₹35,06,466.83/- (₹36,13,705 - ₹1,07,238.17).

9. The Authority got the delay interest calculated from its Account branch on ₹35,06,466.83/- for the period ranging from 06.09.2015 (deemed date of possession) 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 ₹19,59,289/- and it is held payable by the respondent to the complainant. For further delay occurring after the date of this order, respondent is liable to pay monthly interest of ₹27,175/- to complainants commencing from 09.10.2021 till valid offer of possession is made to them after obtaining occupation certificate.

Respondent is directed to pay the amount of delay interest of ₹19,59,289/- within 90 days of uploading of this order on the website of the

Authority. Respondent's liability for paying monthly interest of ₹27,175/- will commence w.e.f. 09.10.2021 and it shall be paid on monthly basis till valid offer of possession is made to complainants after obtaining occupation certificate.

8. In the above terms, case is **disposed of**. File be consigned to record room and order be uploaded on the website of the Authority.



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ANIL KUMAR PANWAR
[MEMBER]



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DILBAG SINGH SIHAG
[MEMBER]