



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in
COMPLAINT NO. 779 OF 2020

Bhim Singh Pawar

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

Anil Kumar Panwar
Dilbag Singh Sihag

Member
Member

Date of Hearing: 03.12.2021

Hearing:

8th

Present: -

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

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

ORDER (ANIL KUMAR PANWAR - MEMBER)

1. Respective averments of the parties relating to the present case have been captured in detailed in the order dated 17.08.2021 and the Hon'ble Chairman for the reasons expressed in the said order has ruled that the complainant is not an allottee of the project and accordingly, a direction was

given to the respondent to return the complainant already paid amount of ₹2,90,000/- alongwith interest prescribed in Rule15 of HRERA Rules, 2017.

The order dated 17.08.2021 so passed by the Hon'ble Chairman is reproduced as under:-

“1. Complainant's case is that on 29.09.2009 he booked a plot measuring 300 sq. yards in a project named 'Parsvnath City, Rohtak' being developed by respondent by paying booking amount of ₹2,90,000/-. Thereafter, respondent vide letter dated 20.03.2013 had admitted that unit bearing no. 428 in Parsvnath City, Rohtak had been booked for the complainant and requested the complainant to provide them copy of Pan Card. Complainant visited the office of the respondent company numerous times requesting them allot to 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. 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 plot by complainant. He has also admitted he has already received a sum of ₹2,90,000/- from the complainant. The respondent has however disputed the complainant's right to the allotment of plot as according to him, the complainant applied for advance registration of a plot in upcoming project of the respondent company by depositing a sum of ₹2,90,000/-. Location, number and site of the plot was not confirmed and moreover complainant 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 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 shall 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, claim of the complainant is barred by limitation. However, she stated that respondent is ready to refund the amount along with interest.

5. Considering written and verbal pleading of both the parties, Authority finds that complainant had booked the plot in the year 2009 by depositing earnest money of ₹2,90,000/- . 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 2013 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 ₹2,90,000/- 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 ₹2,90,000/- 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 ₹6,10,537/- (₹2,90,000/- + ₹3,20,537/-).

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.”

2. Member-I of the Authority however passed a separate order and decided to obtain certain information from the respondent for effective and proper adjudication of the matter. The orders so passed by Member-I is reproduced as under:-

“Have the privilege of going through the order handed down by Hon'ble Chairman. For the reasons recorded hereafter, the undersigned member, however will direct the promoter to file certain information for effective and proper adjudication of the complaint. Money was undeniably collected from the complainant as advance registration money for a plot measuring 350 sq. yards in upcoming project of the respondent. The covenant discussed by Hon'ble Chairman and on the basis of which the complainant's claim for allotment was declined is reproduced at Page-3 of the order. The respondent per said clause under took that he “shall try to make the allotment”. So,



the basic question is whether a sincere effort was in fact made by the respondent for allotment of the plot to the complainant. Answer to this question can be found only if the promoter lays before the Authority complete data containing the following informations: -

i) The name of the project undertaken and developed by the respondent at the time or immediately after the time of receipt of registration money.

ii) The complete details of the advance registration money collected from other persons during the period of one month prior as well as one month after the date on which advance registration money was collected the complainant.

iii) The details of allotment if any, made to the persons from whom the advance registration money was collected around the time when such money was collected from the present complainant.

2. After filing of above informations, the Authority must adjudicate upon the question as whether or not the respondent has made an indiscriminate and arbitrary allotment. And if this question meets an affirmative answer, the complainant then would be entitled to allotment on parity with the allotments made in favour of the person(s) from whom advance registration money was collected subsequent to the date of collection of such money from the complainant.

3. So, the respondent is directed to furnish the above mentioned information for effective and proper adjudication of the complaint.”

3. Member-II of the Authority agreed with the view expressed by Member-I and has passed the following order:-

“I undersigned do agree with the view of Hon’ble Member Shri A.K. Panwar that certain information as mentioned in his para no. 1 may help in adjudication of this case in a better way. Therefore, above said information may be sought from the respondent promoter and case may be fixed for further hearing on 11.11.2021.”



4. Due to non-availability of Hon'ble Chairman the case on 11.11.2021 was heard by a bench comprising of the Members and following orders were passed on the said date:-

- “1. Learned counsel for the respondent sought time to submit information as required by Authority vide its order dated 17.08.2021. Said information be submitted latest by 20.11.2021 as per assurances given by learned counsel for respondent.
2. Case is adjourned to **30.11.2021.**”

5. When full bench of the Authority assembled for hearing of the matter on 30.11.2021, the Hon'ble Chairman had decided to recuse himself from further hearing of this case for the reason expressed in the order which is reproduced as under:-

- “1. This matter had come up before full bench of the Authority on 17.08.2021 of which Chairman of the Authority had dictated the order disposing of the matter in terms of details given in the said order. Both Members, however, had a difference of view with Chairman and had written their separate judgement.
2. Today this matter again came up before the full bench of the Authority. Chairman expressed his views that he would like to maintain his earlier orders dated 17.08.2021. Further, so as not to prejudice proceedings in the matter, Chairman decided to recuse himself from further hearing of this complaint. So, the matter will be taken up by a bench comprising of the Members of this Authority who had expressed a different view. Case is adjourned and will accordingly be taken after sometime on assembly of a bench comprised of the Members.”

6. Thereafter, a bench comprising of two Members assembled to further hear the matter. Respondent did not furnish the required information on 30.11.2021 and sought further adjournment. Considering such request, the



Authority granted last opportunity to the respondent for furnishing the required information and case was adjourned for today i.e. 03.12.2021.

7. Today, the respondent has filed the required information in the form of an affidavit attached with Annexures A and B.

8. Learned counsel for the parties have been heard and record has been perused.

9. The whole idea for calling the information filed today was to adjudge as to whether the respondent had made sincere efforts to allot unit in his project to the complainant in terms of the relevant clause of application form. It becomes necessary to reproduce the said clause because the Hon'ble Chairman on it's basis has observed that "complainant is bound by the terms of application form and as per above said clause (f) shall accept refund of the advance paid alongwith interest@10% p.a." Relevant clause (f) reads as under:

“(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.”

10. The respondent in terms of above clause (f) undertook that he "shall try to make the allotment", and to adjudge whether or not a sincere effort was made for allotment of a plot to the complainant, necessity for obtaining additional information was felt.



11. The information furnished today comprises of two lists viz. Annexures A and Annexure B. The Annexure A contains the names of all those persons who had booked units with the respondent on payment of registration amounts in the manner similar to the one adopted by the complainant. The name of complainant Bhim Singh Pawar appears at serial number 215 on page 7 of list Annexure A. The list Annexure B contains the names of the persons to whom respondent had allotted plots in his project named 'Parsvnath City, Rohtak'. Significant to notice is that several persons who had booked plots on paying amount equal to one paid by complainant had booked plots subsequent to the date on which complainant had submitted his application along with booking amount, have been allotted plots but no allotment was made to the complainant.

12. The explanation furnished in documents filed today for not allotting plot to the complainant is that allotment was made per market practice and the complainant remained unsuccessful in the allotment process. Such explanation is ex facie unbelievable because respondent has maintained a complete silence on the point as to what kind of market practice was adopted for carrying out allotment process, on which date such process was carried out and why money collected from the complainant was not refunded if he was unsuccessful in the allotment process.

13. As a matter of fact, the plea about carrying out allotment process and the complainant having remained unsuccessful in the said process was



nowhere raised in the reply earlier filed by the respondent. Such plea is being rather introduced for the first time in the documents filed today. So, the Authority even otherwise does not find element of truth in such plea of the respondent.

14. The plea so raised further stands belied by the documents Annexure A and B. The names of all those persons who appear at serial number 175-201 and from serial number 224-236 in list Annexure A are appearing even in the list Annexure B at serial number 296-322 and from serial number 323-335. If it were a case of allotment by draw, it is not merely improbable but also unbelievable that whole bunch of persons at 175-201 and whole bunch of persons at serial number 224-236 were so lucky that they found en bloc berths in the same seratum in the allotment list Annexure B and equally surprising is that bunch of all persons intervening at serial number 202-223 which includes the name of present complainant at serial number 215 had remained unsuccessful and none of them was lucky to have an allotment. This fact, by itself, proves that no valid and logical criteria was adopted for allotment. Rather, the respondent has made allotment in a whimsical, unfair, arbitrary and discriminatory manner. As a result, the complainant had been discriminated vis-a-vis the persons against whom he had a superior right for allotment because he had booked plots and deposited money with the respondent earlier in point of time.




15. The aforesaid being the situation, the Authority has no hesitation to conclude that the respondent has made no sincere efforts on his part to allot plot to the complainant at the time when plots were available and were being allotted to the persons over whom he has a superior right of allotment.

16. So, the respondent merely on the strength of earlier referred clause (f) of the application form, can not defeat the claim of the complainant for allotment of a plot and delivering possession in his project Parsvnath City Rohtak. As a corollary to such conclusion, the complainant is held entitled to have a direction against the respondent for allotment and possession of a plot in his project named 'Parsvnath City, Rohtak'.

17. The complaint is allowed in aforesaid terms directing the respondent to deliver valid possession of plot to the complainant in his project named 'Parsvnath City, Rohtak' on payment of balance sale consideration of ₹16,52,500/- (₹19,42,500 - ₹2,90,000/-) plus all such statutory charges as have been charged from the other allottees of the Parsvnath City Project.

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


ANIL KUMAR PANWAR
[MEMBER]


DILBAG SINGH SIHAG
[MEMBER]