



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

BEFORE THE ADJUDICATING OFFICER

COMPLAINT NO.491 OF 2021

Date of Institution: 26.04.2021

Date of Decision: 09.12.2021

Rohit Khangwal, aged about 45 years, son of Shri R.K. Khangwal, resident of House No.194, Ward No.14, Mohalla Chunni Pura, Rohtak, District Rohtak, Haryana-124001.

.....Complainant

Versus

M/s Parsvnath Developers Limited, through its Chairman Shri Pradeep Jain, having its Registered office and Corporate Office at Parsvnath Tower, near Shahadara Metro Station, Delhi-110032.

.....Respondent

Hearing : 12th

CORAM : Dr. Sarita Gupta, Adjudicating Officer

Present : Shri Sudhir Kashyap, Counsel for complainant through video conferencing.

Mrs. Rupali S. Verma, Counsel for respondent through video conferencing.

JUDGEMENT :-

The brief facts of the case of complainant are:

2. The complainant Rohit Khangwal had booked a plot measuring 300 sq. yards in residential unregistered project of the respondent developer namely "Parsvnath City, Rohtak". The complainant had paid an amount of ₹22,80,609/- against basic sale price of ₹15,75,000/-. Said amount of ₹22,80,609/- constituted 90% of total sale consideration and remaining 10% was to be paid at time of offer of possession. On 19.07.2012, plot buyer agreement was executed between the complainant and the respondent developer with regard to plot no. C-211, block C measuring 300 sq. yards in the project namely "Parsvnath City" Rohtak, of the respondent. As per clause 8(a) of said agreement, possession was to be delivered within a period of 24 months from the date of signing of the said agreement. Till 2015, no offer of possession was made to the complainant. Rather a letter dated 28.04.2015 was issued by the respondent to the complainant demanding service tax on preferential location and administrative charges to the tune of ₹2318/-. The said amount was paid by the complainant vide demand draft. Even after expiry of six years, offer of possession was not made by the respondent. After lapse of 8 years, the respondent has failed to initiate development works at the site contrary to what was agreed under plot buyer agreement. Vide letter

dated 30.06.2020 offer of possession was made to the complainant by the respondent for alternative plot no. C-143 having area of 299 sq. yards in the same project of the respondent developer. Statement of account of the complainant was also appended with the said letter. Complainant was asked to clear the dues for obtaining no dues certificate so as to get physical possession of the plot. The respondent had illegally demanded ₹1,64,089/- on account of basic cost plus IDC plus interest of delayed payment up to 31.05.2020. An amount of ₹58,484/- has been shown due towards the complainant against interest free security deposit + maintenance charges + GST on maintenance charges + registration charges for conveyance deed and preferential/ institutional charges for registration of plot and ₹1,09,000/- against stamp duty charges. In fact remaining 10% of total sale consideration was to be paid by the complainant which comes to ₹1,49,616/-. Since the grievances of the complainant were not adhered to by the respondent, a legal notice was served upon the respondent seeking compensation along with interest and for the excess payment made by the complainant in the form of external development charges(EDC) and preferential location charges(PLC). By way of the present complaint, complainant has sought compensation to the tune of ₹20,54,783/- calculated @15% p.a. on the amount already paid i.e. ₹22,83,093/-, compensation of ₹ 1 lakh on account of harassment, mental agony and litigation cost of ₹ 50,000/-.

3. Respondent appeared and filed reply taking preliminary objections with regard to maintainability of the complaint as the project was at the verge of completion and the complainant had already been offered the possession of his plot on 30.06.2020. If the relief sought by the complainant is granted, it will not only hamper the project but will also affect interest of other allottees. The complainant was provisionally allotted plot bearing no. C-211 measuring 300 sq. yards in the project of respondent company namely "Parsvnath City", Rohtak. Time was not essence of the contract. With respect to delay in offer of possession, it has been stated by the respondent that licence was obtained on 07.05.2010 from DTCP, Haryana for promotion and development of residential plotted colony on land measuring 118.188 acre in village Bohar, Rohtak. Subsequently, on 07.11.2014 DTCP had de-licensed an area measuring 14.15 acres as the said land was acquired by HSIIDC, Haryana. Respondent had filed an application for renewal of said license for an area measuring 104.038 acres on 07.10.2015 and submitted its revised layout plan and demarcation-cum-zoning plan. The respondent company had applied for the renewal of licence for further period from 07.05.2014 to 06.05.2020 with requisite licence renewal fee. The respondent had also applied for the registration of said project under RERA Act 2016 and the proceedings have been going on for registration. Issues pending with DTCP Haryana regarding approval of revised layout plan and demarcation-cum-zoning plan have been resolved on 28.02.2020 with intervention of Hon'ble Real Estate Regulatory Authority (RERA). The complainant has been offered possession of his plot on 30.06.2020. Due to certain modifications of

revised layout plan by DTCP Haryana, the initial plot bearing no.C-211 measuring 300 sq.yds. was not feasible to be allotted. On 30.06.2020, the complainant was offered possession of alternate plot bearing No.C-143 measuring 299 sq.yds. There is no delay on the part of the respondent company. The project has been delayed for the reasons beyond the control of respondent company. Basic infrastructure and internal development work have already been completed at the project site. After the land being acquired by HSIIDC, the entire layout plan of the project was changed. Plots could not be offered to the respective allottees due to delay in renewal of licence, revised layout and demarcation-cum-zoning plan. No cause of action has arisen in favour of the complainant. The complaint is mis-conceived, erroneous and untenable in the eyes of law. The reliefs claimed by the complainant do not fall within the jurisdiction of Adjudicating Officer.

4. On merits, it has been submitted that handing over of possession of plot is subject to various terms and conditions i.e. acquiring of land by HSIIDC, pendency of renewal of license etc. Service tax of ₹ 2318/- was charged as per statutory charges of Government of India, the respondent cannot be burdened with heavy cost which will further delay the completion of the project. Complainant cannot be allowed to run away from its obligation to pay his dues. All the charges raised in financial statement of account dated 30.06.2020 are in accordance with the terms and conditions of executed plot buyer agreement. The respondent has also waived off interest on delayed payments

made by the complainant. The project of the respondent is an on-going project before Hon'ble Authority. The complainant may be directed to take possession of plot C-143 and proceed to pay outstanding amount and get the conveyance deed executed. Dismissal of the complaint has been prayed for.

5. The complainant has filed rejoinder to the written statement filed by the respondent, reiterating the allegations made in the complaint with further additions that the respondent has illegally demanded a sum of ₹1,64,089/-, ₹5848/-, ₹1,09,900/- under column A, B, D, E & F of the final statement of account placed on record as Annexure-C4 whereas levy of such charges will be payable only after delivery of possession or at the time of execution of sale deed for the said plot. There is no occasion for charging maintenance charges before delivery of physical possession. A sum of ₹2318/- has been taken by the respondent from the complainant on account of preferential location charges whereas the complainant has not been offered preferential location. In plot buyer agreement, the respondent has wrongly mentioned amount of ₹14,17,500/-, whereas amount of ₹22,80,609/- has been paid by the complainant.

6. Arguments advanced by the learned counsel for both the parties have been carefully heard along with meticulous examination of the records of the case.

7. At the outset, it has been argued by the Id. counsel for the complainant that the complainant had booked a residential plot in Parsvnath City, sector 33-A near

IMT Industrial Area, Delhi bypass road, Rohtak. Plot buyer agreement was executed between the parties on 19.07.2012 and a sum of ₹ 22,80,609/- was paid. The possession of the plot was to be offered within a period of 24 months from the date of plot buyer agreement. In the year 2014, an area measuring 14.15 acres was de-licensed. Issues pending with DTCP regarding approval of revised layout plan and demarcation-cum-zoning plan have been resolved on 28.02.2020 and the complainant has been offered possession of alternate plot bearing no.C-143 measuring 299 sq.yds. instead of originally allotted plot bearing no.C-211, measuring 300 sq.yds. Before allotment of alternate plot, no consent was taken from the complainant which is violation of section 14 of The RERA Act 2016, which provides that the respondent is bound to obtain consent of the buyer and intimate him regarding any additions, alterations in the sanctioned plans and layout plans.

8. With regard to argument that the developer is bound to hand over possession on time as mentioned in plot buyer agreement, it has been argued by Id. counsel for the complainant that in the present case, possession has been offered after around six years. The allottee cannot be made to wait indefinitely for the possession of the plot/flat. If possession is offered after a long delay, the allottee cannot be compelled to take the possession. He has placed reliance on 2019(2) RCR(CIVIL) 738 titled as Pioneer Urban Land & Infrastructure Ltd. vs Govindan Raghvan and Consumer Case no.1805 of 2018 decided by Hon'ble National Consumer Disputes

Redressal Commission on 24.07.2019 titled as Rajvir Singh Rana and another vs Pioneer Urban Land & Infrastructure Ltd. In both these authorities, it has been observed that a person/buyer cannot be made to wait indefinitely for possession of flat allotted to him and the buyer cannot be compelled to accept delayed possession of flats.

9. It has further been argued by the ld. counsel for the complainant that if the possession of the allotted plot is not handed over by the respondent developer within time, the respondent is bound to pay compensation to the allottee for delayed possession. Ld. counsel for the complainant has placed reliance on 2020 SCC online SC 667 titled as Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and others vs DLF Southern Pvt.Ltd. in which it has been observed by Hon'ble Supreme Court that the flat buyers are entitled to compensation for delayed handing over of possession and for the violations of the developer to fulfil the obligations made to flat buyers with regard to the provision of amenities.

10. It has next been argued by ld. counsel for the complainant that if the project of the developer is delayed for the reasons attributable to it, the builder should refund money and pay compensation for delayed project with interest at the rate at par with home loan rates, which is also the observation of Hon'ble National Consumer Disputes Redressal Commission in M/s Country Colonizers Pvt. Ltd. vs Harmit Singh Arora and others decided on 03.06.2019.

11. It has been argued by the ld. counsel for the complainant that since the possession of plot was offered in the year 2020 which was to be offered in the year 2014, the complainant is entitled to compensation on delayed delivery of possession on the amount of ₹22,80,609/- as observed by Hon'ble Apex Court in Wg.Cdr.'s case (Supra). Compensation is to be calculated @ 15% per annum on the amount deposited by the complainant, which comes to ₹20,54,783/-.

12. To rebut the arguments of ld. counsel for complainant, the first argument raised by ld. counsel for respondent is that the present complaint is not maintainable before the Court of Adjudicating Officer directly, it is to be referred by Hon'ble Authority as per Real Estate (Regulation & Development) Rules 2019. It has further been argued that the complainant has sought interest in the shape of compensation for the delayed delivery of possession. In fact, the Adjudicating Officer is not empowered to grant interest on delayed possession. Rather this power lies with Hon'ble Authority. This relief cannot be granted by this Court. It has further been argued by ld. counsel for respondent that at the time of seeking relief of compensation, the grounds of mental harassment and agony have neither been pleaded nor proved. To grant compensation, it is the requirement of law that the loss incurred by the complainant and gain to the respondent have to be specifically pleaded and proved. In the absence of any such averments or proof of the same, the complainant is not entitled to claim compensation.

13. So far as delay in handing over possession of the plot is concerned, it has been argued by Id. counsel for the respondent that it was not the fault of respondent in handing over possession of the plot after delay of six years. In fact land measuring 14.15 acres out of total land was de-licensed on 07.11.2014. The respondent had filed application for renewal of license of area measuring 104.038 acres on 07.10.2015 and submitted revised layout plan and demarcation-cum-zoning plan. It was only on 28.02.2020, the issues pending with DTCP, Haryana regarding approval of revised layout plan and demarcation-cum-zoning plan were resolved. Due to certain modifications of revised layout plan by competent authority DTCP, Haryana, plot no. C-211 measuring 300 sq.yds., which was initially allotted to the complainant was not feasible to be allotted. In these circumstances after approval of revised layout plan and demarcation-cum-zoning plan by competent authority, the complainant was offered possession of alternate plot bearing no.C-143 measuring 299 sq.yds. on 30.06.2020. Even after the offer of possession to the complainant, the complainant has not come forward to take possession. Despite the fact that around one year and six months have passed when possession was offered to the complainants. Instead of taking possession, the complainant has filed complaint seeking compensation, whereas the respondent has become entitled to claim holding charges. It has further been argued by Id. counsel for the respondent that in the plot buyer agreement, it was never agreed by the respondent that possession of the plot would be delivered within a period of 24 months, rather it was mentioned in clause 8A of the said agreement that the developer shall endeavour

to complete the internal development works of the colony within 24 months from the date of signing of agreement subject to force-majeure conditions and timely payment by the buyers. It has further been pointed out by ld. counsel for the respondent that at the time of handing over of possession along with final statement of accounts, ₹ 69,057/- have already been waived off which were to be charged by the respondent for delay in payment of instalments by the complainant. Ld. counsel for the respondent has prayed for dismissal of the complaint.

14. In reply to the arguments of ld. counsel for the respondent, it has been argued by ld. counsel for the complainant that the plea of respondent that compensation could be granted to the complainant only after reference being made by Hon'ble Authority and the Adjudicating Officer cannot grant compensation directly to the complainant, has not been taken in reply, rather it is an afterthought. It has also been argued by ld. counsel for the complainant that that the plea of force-majeure taken by the respondent is not accepted by Hon'ble Authority in bunch of cases with lead case no.1253 of 2020 titled as Naresh Kumar vs Parsvnath Developers Ltd. vide its order dated 30.11.2021, copy of which has been placed on record. Ld. counsel for the complainant has prayed for granting compensation on account of harassment, mental agony and cost of litigation along with compensation for delayed delivery of possession.

15. First of all taking up the issue of maintainability of present complaint before this Court. It is the argument of ld. counsel for the respondent that as per amended Rules, the complainant cannot approach this Court directly to claim compensation unless it is referred by Hon'ble Authority after conducting inquiry. It has further been argued that the Haryana Real Estate (Regulation and Development) Rules, 2017 are not applicable. Rather amended Rules of 2019 are applicable to the present case and as per amended Rules, the complaint claiming compensation cannot be filed unless referred to by Hon'ble Authority after making due inquiry.

16. Perusal of file shows that the present complaint seeking compensation has been filed under Section 71 of The RERA Act 2016. As per Section 71 of The RERA Act, complaint seeking compensation would be filed before Adjudicating Officer. Though in the amended Rules 2019, it has been mentioned that firstly Authority will hold inquiry and then refer the case to Adjudicating Officer for adjudging compensation. It is worthwhile to mention here that the RERA Act 2016 is a Central Act and the Rules are framed by State Govt. The Rules have been made to support and explain the provisions of Act, not to contradict the provisions of Central Act. If in the Act itself, it has been mentioned that the complaint for compensation shall be filed before Adjudicating Officer, the Rules made by State Govt. are not to override the vires of the Act. Moreover, in judgement dated 11.11.2021 passed by Hon'ble Apex Court in SLP(Civil)-3711-3715 of 2021 titled as M/s Newtech Promoters and Developers

Pvt. Ltd. versus The State of Uttar Pradesh, it has nowhere been observed that compensation cases would be dealt with by Adjudicating Officer after being referred to by Hon'ble Authority after making due inquiry. Rather it has been observed that compensation cases are to be dealt with by Adjudicating Officer. As per provisions of section 35 of The RERA Act 2016, any aggrieved person may file a complaint with Adjudicating Officer for interest and compensation provided under sections 12, 14, 18 & 19 of the Act.

17. There is no substance in the argument of ld. counsel for the respondent and it is observed that the complaint for compensation is maintainable before this Court.

18. The complainant has sought two reliefs, first is to award compensation to the tune of ₹20,54,783/- calculated on the amount already paid by the complainant i.e. ₹22,83,093/- at the rate of 15% per annum for six years on account of delayed possession and further to adjust excess payment made by the complainant in the form of external development charges and preferential location charges.

19. Though complainant has sought relief of ₹20,54,783/- in the form of compensation calculated @ 15% per annum on account of **delayed possession**, it is relevant to mention here that the jurisdiction to decide relief of interest for delayed possession lies with Hon'ble Authority. Though the complainant has used the word

'compensation', yet it is not compensation, it is the interest sought @ 15% per annum for six years on account of delayed possession. Merely by changing the nomenclature, the complainant does not become entitled to any relief relating to delayed possession. Though ld. counsel for the complainant has placed reliance on observations of Hon'ble Apex Court in Wg.Cdr. Arifur Rahman Khan's case (Supra), in which it has been observed that the flat buyers are entitled to compensation for delayed handing over of possession and in M/s Country Colonizers' case (Supra), it has been observed by Hon'ble National Consumer Disputes Redressal Commission that if the project of the developer is delayed for reasons attributable to it, the builder should refund the money and pay compensation for delayed project with interest at the rate at par with home loan rates, yet it has nowhere been mentioned that this relief would be granted by Adjudicating Officer. It is only observed that the complainant is entitled to said relief. Hence, there is no substance in the argument of ld. counsel for the complainant that the complainant is entitled to ₹20,54,783/- as compensation for delayed delivery of possession.

20. The complainant has also sought relief for adjusting excess payment paid by him in the form of external development charges and preferential location charges. It is pertinent to mention here that both these reliefs are also related with possession of the plot allotted to the complainant. It is made clear that all the reliefs relating to possession or any dispute regarding entry in the statement of account would be dealt

with by Hon'ble Authority as all these disputes are relating to possession. Hence, no compensation is being granted under this head. The complainant is at liberty to move Hon'ble Authority for these reliefs.

21. The second relief sought by the complainant is compensation to the tune of ₹1,00,000/- on account of unprecedented mental agony and harassment. It has been argued by ld. counsel for the complainant that possession of the plot was to be delivered to the complainant till 2014. Now the possession has been offered after delay of six years in the year 2020. A number of times the complainant had requested to deliver possession but on one pretext or the other, possession could not be given. The respondent has taken false plea of force-majeure which is not accepted even by Hon'ble Authority. Because of six years' long delay in offering possession, the complainant has suffered mental agony and harassment which the respondent is liable to compensate.

22. In reply to the arguments of ld. counsel for the complainant, it has been argued by ld. counsel for respondent that there is no evidence of mental agony and harassment allegedly suffered by the complainant. If the complainant wants compensation on account of mental agony and harassment, he is required to prove the same. In the absence of any evidence, no amount can be awarded under the head compensation for mental agony and harassment.

23. So far as the defence of force-majeure taken by the respondent is concerned, it is worthwhile to mention here that in bunch of complaints in which Complaint no.1253 of 2020 titled as Naresh Kumari vs Parsvnath Developers Ltd. was the lead case, vide order dated 30.11.2021, it has been observed by Hon'ble Authority that the plot buyer agreements were executed by the respondent being fully aware that part of the project land was acquired and it would necessarily lead to revision of approved plans. Plots were even allotted in the land which was finally acquired by the Government. No justification could be found for such an act on the part of respondent. The plea was taken by the respondent that the offer of possession was delayed on account of delay caused by the Town & Country Planning Department, as their revised plans were not approved. This argument was also not accepted by Hon'ble Authority.
24. Since in the same project of Rohtak, in bunch of cases taking lead case no.1253 of 2020 titled as Naresh Kumari vs Parsvnath Developers Ltd., Hon'ble Authority has observed that force-majeure was not applicable and delay in handing over possession was on account of fault on the part of respondent, relying upon this observation of Hon'ble Authority, it is hereby observed that no benefit of force-majeure is being given to the respondent and there was delay of six years from deemed date of possession and giving offer of possession. Record shows that total amount of ₹22,82,018/- was deposited by the complainant till the year 2012. Customer ledger dated 01.10.2021 at pages 36-38 of reply of the respondent shows that amount of

₹7,68,600/-, ₹71,100/- and ₹2318/- (total ₹8,42,018) have been deposited by the complainant towards EDC, IDC and service tax respectively. The amount of EDC, IDC and service 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 compensation to the allottee on the amounts collected for passing over to other department/authorities concerned. In these circumstances, compensation to the complainant is to be paid on ₹14,40,000/- (₹22,82,018/- minus ₹8,42,018/-). Since the amount of ₹14,40,000/- has been utilised by the respondent even after the year 2014 in which year the possession of the plot was to be delivered to the complainant, till the year 2020 when offer of possession has been made to the complainant, it would be suffice to say that the complainant had suffered mental agony and harassment on account of continuous default on the part of the respondent, ends of justice would be met if the compensation is granted to the complainant on ₹14,40,000/- for a period from 19.07.2014 to 30.06.2020. In Wg.Cdr. Arifur Rahman Khan's case (Supra), the respondents were directed by Hon'ble Apex Court to pay as measure of compensation, an amount calculated @ 6% simple interest per annum to the appellant. The amount shall be computed on the total amount paid towards the purchase of respective flats

w.e.f. the date of expiry of 36 months from execution of apartment buyer agreement until the date of offer of possession after receipt of occupation certificate.

25. Applying the ratio of aforesaid authority of Hon'ble Apex Court, the compensation payable to the complainant is being calculated @ 6% per annum:

Amount (in ₹)	Time period	Rate	Compensation (in ₹)
14,40,000/-	19.07.2014 to 30.06.2020	6%	5,14,139/-

26. Though the compensation computed above comes to ₹5,14,139/-, yet the complainant has sought relief of compensation on account of mental agony and harassment to the extent of ₹1,00,000/-. The complainant cannot be allowed more than the relief claimed. Hence, the amount of compensation under the head mental agony and harassment is limited to ₹1,00,000/-. ₹25,000/- is being awarded to the complainant as cost of litigation. The total amount of compensation payable to the complainant comes to ₹1,00,000/- + ₹25,000/- = ₹1,25,000/- (Rupees One lakh Twenty Five thousand only).

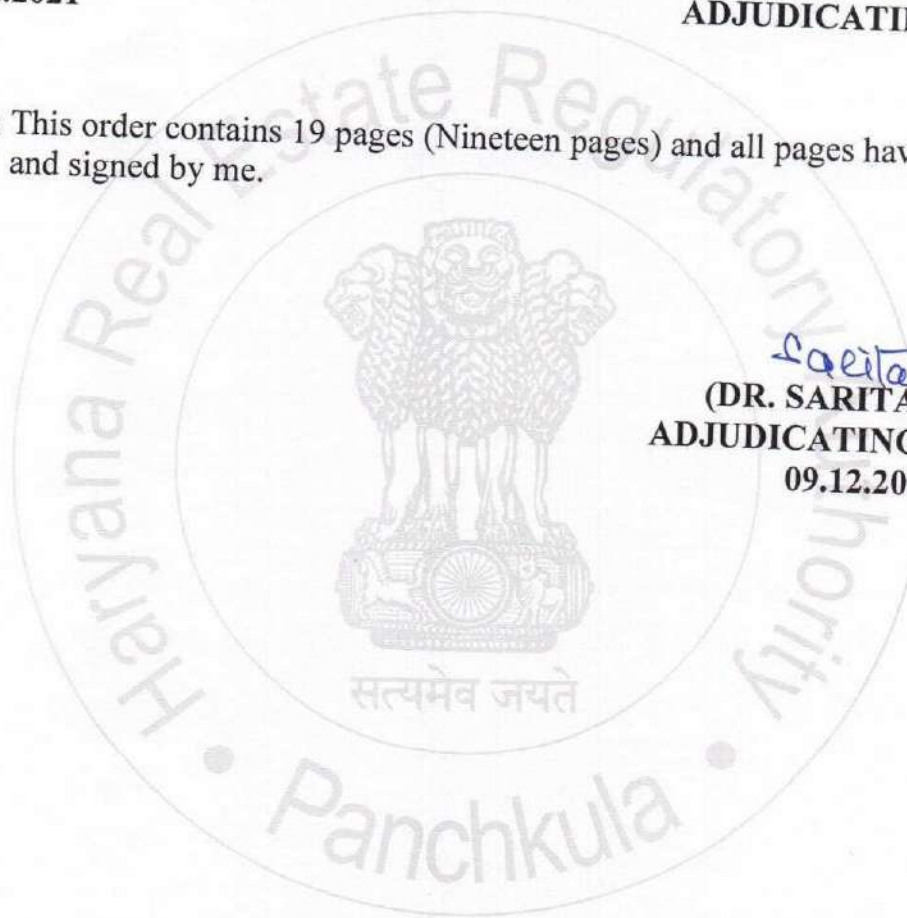
27. In these terms, the complaint is partly allowed, the respondent is directed to pay ₹1,25,000/- (Rupees One lakh Twenty Five thousand only) to the complainant within a period of 90 days from the date of uploading of this order.

28. The present complaint stands disposed of. File be consigned to record room after uploading of this order on the website of the Authority.

09.12.2021

Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER

Note: This order contains 19 pages (Nineteen pages) and all pages have been checked and signed by me.



Sarita Gupta
(DR. SARITA GUPTA)
ADJUDICATING OFFICER
09.12.2021