



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

COMPLAINT NO. 239 OF 2019

Balraj Singh Sihag

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

Rajan Gupta
Dilbag Singh Sihag

Chairman
Member

Date of Hearing: 04.05.2022

Hearing: 22nd

Present: -

Mr. Rajvir Singh, 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 pleadings, learned counsel for the complainant narrated detailed facts of the case. Complainant has booked a flat bearing no. T9-303 admeasuring 1740 sq. ft. in a project named

'Parsvnath Royale, Sector 20, Panchkula', being developed by the respondent in the year 2010. Complainant has paid a sum of ₹55,29,440/- till 19.03.2014 against basic sale consideration of ₹56,55,000/-. Flat buyer agreement was executed between the parties on 27.01.2011 and as per clause 10(a) of said agreement, respondent was under an obligation to hand over possession of the flat within thirty six months with grace period of six months which means on or before 27.07.2014. He further submitted that there has been delay of almost eight years but respondent has failed to fulfil his commitment of handing over of possession of booked flat till date. Learned counsel for the complainant also averred that complainant is a retiree who is presently living in a rental accommodation but respondent is absolutely insensitive to the plight of the complainant and is still not in a position to fulfil his commitment of handing over of the possession. Hence, present complaint has been filed seeking possession of the flat with permissible interest for delay in handing over the possession and reimbursement of amount of ₹4,25,000/- being paid by complainant towards rent and compensation.

2. Respondent in his reply submitted on 20.02.2019 has categorically admitted major facts relating to booking of the apartment; agreed sales consideration; area and location of the apartment apart from payment of ₹55,29,440/- made by the complainant that too by 2014. Respondent, however, has called the allottee a defaulter in payment of

overdue installments. Respondent further stated that project was being developed in terms of statutory approvals granted by the competent authorities. It has been stated that project has been registered vide certificate no. HRERA-PKL-(PKL-16-2018) dated 19.06.2018. Respondent has stated that all statutory dues in the form of EDC, IDC, licence fee, conversion charges have been paid in full to the competent authority. Project was being developed in nine towers out of which three towers i.e. T1, T2 and T3 were almost complete for delivery and possession has already been offered for fit outs. In tower T4, outer and internal plasterwork was almost complete and finishing work was in progress whereas in towers T5 to T9, remaining plastering works and finishing works were in progress. Respondent has further argued that delay in completion of project was not intentional rather delay took place for reasons beyond control of the respondent company. It has also been contented that in February 2015, department came out with a policy for formal transfer of beneficiary interest/development and marketing rights and same has been implemented with retrospective effect. In this process, even policy was under review as late as 31.01.2017, thus, license could not be renewed by the department, which in turn, affected registration of the project under RERA. It has further been stated that as per clause 8(b) of flat buyer agreement executed between the parties, it had been agreed that in case project or part of the project is abandoned, company would refund the amount with interest @12%. Respondent has stated that he has been

putting his best efforts to complete the project and suggested that complainant's booking could be shifted to flat in towers T1 to T3 where possession has been offered for fit out purposes.

3. Perusal of record reveals that matter was first taken up on 28.02.2109 and it was admitted fact that tower in which flat of complainant was located was not completed and a proposal was made by the respondent to offer alternate unit to the complainant. Respondent was accordingly directed to offer the complainant alternate unit in towers T1-T3. Vide order dated 02.04.2019, respondent was directed to send offer in writing and disclosing the flat no. of the alternate flat being offered to the complainant and a detailed statement of account including the amount of delay interest payable to the complainant may be issued.

4. In compliance of order dated 02.04.2019, respondent offered alternate unit bearing no. T3-702 to the complainant (vide letter dated 02.04.2019) in lieu of originally allotted flat bearing no. T9-303 and same was acceptable by the complainant, however respondent did not provide the statement of account to the complainant as directed by the Authority. Therefore, vide order dated 25.09.2019, Authority observed that respondent was deliberately evading to provide details of interest payable to the complainant for delay in handing over the possession. Therefore, complainant was directed to calculate delay interest and the respondent was again directed to provide a detailed statement of accounts to the complainant



of all receivable and payable amounts. Operative part of said order is reproduced here for reference:

“3. The Authority observes that respondent is evading to provide the details of delayed compensation payable by him to the complainant. So, the Authority directs the complainant to calculate the delayed compensation @10.45% from deemed date of delivery of possession till the possession is actually handed over.

As the said offer of new unit is acceptable to the complainant, the Authority directs the respondent to provide a detailed statement of accounts to the complainant of all receivable and payable amounts so that the accounts are settled and possession can be handed over to the complainant without any further delay. While calculating the said amounts the respondent shall charge rate of interest on delayed instalment @ 9 % instead of 24% and no escalation charges after the deemed date of possession shall be charged.”

5. In compliance of order dated 25.09.2019, respondent submitted the final statement of accounts but not in conformity of above orders of the Authority and complainant also submitted his calculations for interest payable to him. Since there was difference in the amounts specified by parties as interest of delay period, Authority vide its order dated 10.10.2019, got calculated the amount of interest from its Accounts Branch and categorically discussed the statement of accounts submitted by the respondent as to which components he could and on what components he could not charge. Respondent was directed to issue a fresh statement of accounts of receivable and payable amounts in view of direction in given



vide order dated 10.10.2019. Order dated 10.10.2019 is reproduced here for ready reverence:

“1. Mr. B.S. Sihag today appeared in person in the court and submitted that the offer of possession made by the respondent of alternative flat bearing no. T3-702 in lieu of initially booked T9-303 is acceptable to him though the respondent has not mentioned the details of interest to be received by him against delay in handing over the possession of the said alternative apartment i.e. T3-702, despite the last orders of the Authority to calculate the interest for delay period which is payable to him by the respondent. Therefore, in compliance to such orders, he submits statement of interest and copy of the same he supplied to the respondent.

Learned counsel for the respondent, on the other hand, also tendered statement of interest payable to the complainant and copy of the same has been supplied to the complainant. Both parties object the amount of interest payable to the complainant.

While perusing both statements of accounts, Authority observes that there is a huge difference in amounts specified by complainant and respondent as interest of delay period payable to the complainant. Therefore, to set the controversy at rest, the Authority asked the Finance Wing of HRERA, Panchkula to calculate interest for delay period starting from deemed date of possession plus 6 months as grace period i.e. 26 July 2014 to 11.12.2019 @ 10.45% as prescribed under Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017. This amount works out to be Rs.31,07,598/-. So, the Authority directs the respondent to pay this amount to the complainant as interest for delay period of handing over the possession of said apartment.

2. Respondent has taken following components while issuing statement of accounts:

- i) Basic cost of the flat.
- ii) Increased area charges.
- iii) Total Gross Value of taxable services.
- iv) GST on Total Gross Value of taxable services.

- v) Service Tax
- vi) Cost of electricity meter and its installation charges.
- vii) Service connection charges.
- viii) Interest on delayed payment @ 9%.
- ix) Security deposit for 16 KW Load
- x) EDC and IDC charges @Rs. 139.60 per sq. ft.
- xi) Interest free security deposit
- xii) Maintenance charges @Rs. 2 per sq.ft. per month for 12 months
- xiii) VAT on due amount till 30.06.2017

Complainants has raised three objections with regard to above components: -

- i) Amount of GST and interest thereon should not be levied on him as GST regime starts from July 2017.
- ii) The respondent can't claim any maintenance charges till the possession is actually handed over.
- iii) The respondent shall charge only those EDC and IDC which are actually payable by the respondent to the concerned department.

Learned counsel for the respondent avers that the respondent is also ready to give possession of flat on fit-out-basis but the same is not acceptable to the complainant as he wants possession of fully furnished flat. Therefore, respondent seeks some more time to complete furnishing of the flat before handing over its possession to the complainant.

3. After hearing both the parties, the Authority observes that the objections made by the complainant with regard to GST, maintenance charges, and EDC and IDC charges are genuine. The respondent can't charge GST from the complainant as GST came in 2017 whereas deemed date of possession was July 2014, therefore, GST and interest thereon is not applicable in this case.

Respondent's claim regarding maintenance charges is not acceptable as he can't claim any maintenance unless and until possession is actually handed over to the complainant that too after obtaining Occupation Certificate from the competent

Authority. Further, respondent can only charge that much amount of EDC and IDC which he is liable to pay to the department of Town and Country Planning as per amount mentioned in terms and conditions of the license. So, the Authority directs the respondent to prepare and issue a fresh statement of accounts of all receivable and payable amounts in view of directions of the Authority. Further Authority also directs the respondent to hand over the possession of fully furnished flat after receiving Occupation Certificate from Town and Country Planning Department by next date of hearing.

4. Case is adjourned to 11.12.2019.”

6. Accordingly, respondent submitted his fresh statement of accounts on 12.03.2020 and complainant had also filed his response to said statement on 13.10.2020 stating therein that statement of accounts filed by the respondent was not in conformity with order dated 10.10.2019 and requested that since he was in dire financial crisis, upfront payment of delay interest shall be ordered. In order dated 14.10.2020, Authority had already discussed the fresh statement of accounts issued by the respondent and rejected the same for the reason of non-conformity with the principles laid down and directions given by the Authority. Respondent was again directed to submit fresh statement of accounts and was ordered to pay the complainant upfront delay interest of ₹31,07,598/-. Order dated 14.10.2020 is reproduce here for reference:

“1. Ld. counsel of the complainant sought attention of the Authority to its order dated 10.10.2019. Vide these orders, Authority categorically observed that there was huge difference in the amounts claimed by the complainant and respondent as interest of delay period payable to the complainant. Hence,

without any prejudice Authority had asked its Finance Wing to calculate delay interest amount for delay in handing over the possession of booked apartment from deemed date of possession i.e. 26 July 2014 (as mentioned in builder buyer agreement) to 11.12.2019. As per office calculation, interest amount had worked out to be ₹31,07,598/- and the same was finalised by the Authority because respondent promoter was not ready to assist the Authority in providing right information despite issuance of repeated directions by the Authority.

2. Accordingly, respondent was directed to pay said amount to the complainant as and when his entire dues of receivable and payable are to be settled by the respondent promoter.

Further, Authority had also meticulously pointed out that respondent could not charge anything from the complainant on account of GST; maintenance charges till possession is handed over to the complainant. Respondent is however free to charge the amount of EDC and IDC which he is liable to pay to the department of Town and Country Planning.

3. Therefore, respondent was also directed to prepare a fresh statement of accounts of entire receivable and payable amounts in view of directions given in said order.

4. It is unfortunate that after seeking three adjournments, respondent filed fresh statement of accounts in compliance of order dated 10.10.2019 on 12.03.2020. So, complainant was allowed time to go through the same and come back if he has any objection against the same.

5. Today, learned counsel for the complainant states that the statement of accounts filed by the respondent is not in conformity with the orders dated 10.10.2019. Despite specific directions given by the Authority in said order, respondent again insisted to charge against following components in its statement of accounts issued on 12.03.2020:

- i) Indexed Construction Cost Escalation
- ii) GST
- iii) Maintenance charges,
- iv) EDC and IDC without any clarification as to how much amount has been paid to the government.

He further objected that he is not liable to pay any Cost escalation and maintenance charges apart from GST because delay in completion of project is on the part of the promoter. Complainant is a victim of the promoter and is being harassed. He is a retiree and living in a rental accommodation but the respondent is deliberately giving wrong information just to mislead the Authority. So, the complainant also prayed that the interest amount of ₹31,07,598/- against delay interest from the deemed date of possession i.e. 26 July 2014 to 11.12.2019 be immediately paid to him since he is in dire financial crisis.

6. Learned counsel for the respondent conceded that respondent had calculated the delayed interest payable to the complainant till 2017 as per flat buyer agreement executed between the parties and after 2017 as per Rule 15 of the HRERA, Rules. Authority while disagreeing with the contention of the ld. counsel has observed that respondent is repeatedly violating the principles laid down by this Authority in complaint no. 113 of 2018 titled Madhu Sareen versus BPTP Ltd. in working out delay interest. Such act of the respondent promoter is unwarranted and unprofessional which is beyond any comprehension. Therefore, such statement of accounts submitted by the respondent is rejected. Authority further observed why a show cause notice be not issued against the promoter u/s 63 of the RERA Act for noncompliance of its orders passed from time to time.

7. After hearing both the parties, Authority observes that there is an extra ordinary delay from the deemed date of possession and six years have already taken place without possession of the apartment and respondent is still seeking six months' more to hand over the possession. Therefore, the demand of complainant for upfront payment of delayed interests appears to be very genuine and logical. So, without any hesitation respondent is hereby directed to pay delayed interest amount of ₹31,07,598/- to the complainant before next date of hearing. Moreover, complainant will be further entitled to claim delay interest beyond 11.12.2019 till handing over the possession of his unit that too after obtaining Occupation Certificate by the promoter from the Competent Authority.

8. Further promoter is given last opportunity to submit statement of accounts afresh in conformity of orders dated 10.10.2019 and subsequent orders because the statement

of accounts dated 12.03.2020 filed by the respondent are quite confusing and not clear as to how much is payable to the complainant and how much he is to pay to the respondent.

9. In brief Authority again repeats following directions and orders:

i) Complainant is not liable to pay GST whatsoever on the ground that GST came in force in 2017 whereas deemed date of possession was July 2014 in this case.

ii) No maintenance charges are to be levied against the complainant till handing over of the possession of the alternate apartment offered by the respondent that too after receiving Occupation Certificate of the same from Town & Country Planning Department.

iii) EDC and IDC will strictly be chargeable as per demand of the Department of Town & Country Planning, conveyed at the time of grant of license.

iv) No cost escalation is to be levied by the respondent promoter as delay in completion of the project is on account of respondent's failure to complete project in time.

Therefore, respondent is again directed to calculate the receivable and payable amounts in view of above directions apart from payment of an amount of ₹31,07,598/- as delay interest before next date of hearing and file a fresh statement specifically disclosing the payable and receivable amounts.

10. Respondent is further directed to file a report regarding the status of the project and by what date he will hand over the possession of the flat, complete in all respects after obtaining Occupation Certificate.

11. With these directions, the case is adjourned to 02.12.2020."

7. Respondent remained defiant in payment of delay interest as directed vide order dated 14.10.2020. So, Authority vide order dated 28.01.2021, again got calculated the delay interest from 11.12.2019 till

31.03.2021 and thus total amount payable to the complainant worked out to be ₹38,61,147/-. Order dated 28.01.2021 is reproduced here for reference:

“1. Learned counsel for the complainant stated that respondent has not paid the amount of delay interest of ₹31,07,598/- despite several directions issued by the Authority. He pleaded that said interest was calculated till 11.12.2019 and therefore, additional interest from 11.12.2019 till date may be added in said amount.

2. On the other hand, learned counsel for the respondent stated that settlement talks are going on between the parties and sought some time for amicable settlement.

3. Accepting the request of the complainant, Authority has got calculated the additional delayed interest from 11.12.2019 till 31.03.2021 which works out to be ₹7,53,549/-. Authority further observes that respondent is inordinately delaying the matter on one pretext or the other. However, last opportunity is being given to the respondent to either produce before the Authority a concrete settlement deeds by next date or pay the complainant delayed interest of ₹38,61,147/- (₹31,07,598/- + ₹7,53,549/-) before next date of hearing failing which Authority will be constrained to initiate penal action under Section 63 of RERA Act.

4. Case is adjourned to 18.03.2021.”

8. Respondent did not comply with the orders passed by the Authority despite repeated directions, therefore, vide order dated 18.03.2021, bank accounts of respondent company were ordered to be attached to the extent of recovering an amount of ₹38,61,147/- and to be remitted to the Authority. An email dated 20.04.2021 was received from the concerned bank revealing that sufficient balance in the account of the respondent company was not available to be remitted to the Authority. Therefore, vide order dated 13.07.2021, fresh notice was ordered to be issued to the concerned bank with

a direction to remit to the Authority whatever amount was available in the accounts of respondent company.

In compliance of said notice, an email dated 06.09.2021 was received from concerned bank stating that they have remitted an amount of ₹14,05,085/- in the account of the Authority and vide order dated 23.02.2022, amount of ₹14,05,085/- was directed to be released into the account of the complainant and respondent was directed to pay the remaining amount.

9. Today, learned counsel for the respondent submitted that Authority has not passed its final order in the matter and has passed various interim orders and the same were being executed. Said practice of executing interim orders is not tenable in law and therefore, Authority may pass final order in the matter and respondent will then execute the order.

10. Authority has gone through written and oral submissions made by both parties while passing of following orders:

(i) In nutshell, respondent has admitted booking of flat bearing no. T9-303 in favour of the complainant and payment of amount of ₹55,29,440/- by the complainant against total sales consideration of ₹56,55,000/- by 2014 and further shifting of his flat to unit no. T3-702 in the year 2019.

Vide various orders as mentioned in paras 3,4,5 and 6 of this order, respondent was directed to issue fresh statement of

accounts of payable and receivable amounts as per directions of the Authority but in order to delay the proceedings of the matter, respondent intentionally gave wrong statement of accounts repeatedly which were not in accordance with principles laid down and directions given by the Authority as has already been mentioned in Para 4 of this order.

(ii) There has been delay of eight years from deemed date of possession i.e 27.04.2014 but respondent failed to complete the project and hand over possession of the booked flat to the complainant. Therefore, it is proved on record that complainant has co-operated with respondent when he accepted the alternate unit in Tower T3. Complainant has sought relief of possession of booked flat along with permissible interest on account of extraordinary delay of eight years by the respondent to deliver possession on the agreed date. Possession has not been handed over till date but the complainant is not interested in withdrawing from the project, despite extra ordinary delay on the part of the respondent in completing the project. Therefore, the only relief which at present can be awarded to him is to direct the promoter to pay upfront interest for delay along with payment of monthly delay interest till handing over of possession of flat to the complainant that too after obtaining

Occupation Certificate from competent authority as provided in Section 17 of RERA Act, 2016.

(ii) Authority holds that there is absolute merit in prayer of the complainant and he is entitled to upfront payment of delay interest at the rate prescribed in Rule 15 of HRERA 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, respondent is liable to pay monthly interest to the complainant till valid and legal possession is offered to him.

(iii) Authority has already calculated amount of delay interest payable to the complainant upto 31.03.2021. Authority has now further got calculated the interest from 01.04.2021 till date at the rate prescribed in Rule 15 of HRERA Rules, 2017 which worked out to ₹5,62,140/-. Thus total upfront delay interest payable to the complainant works out to ₹44,23,287/- (₹38,61,147/- + ₹5,62,140/-). Since a sum of ₹14,05,085/- has already been released into the account of the complainant during the course of the hearings by attaching the accounts of the respondent, total upfront interest which remains payable to the complainant thus comes out to ₹30,18,202/- (₹44,23,287 - ₹14,05,085). Further monthly interest payable to the complainant has been worked out to ₹42,266/-.



(iv) An amount of ₹14,05,085/- available in the accounts of the respondent which were attached by the Authority has been remitted to the Authority and the same has further been released into the account of the complainant. So, Authority directs that the accounts attached vide order dated 18.03.2021 be released and necessary directions to the concerned bank be issued.

Respondent is therefore directed to pay to the complainant upfront delay interest amounting to ₹30,18,202/- within 90 days of uploading of this order on the website of the Authority. Respondent's liability for paying monthly interest of ₹42,266/- will commence w.e.f. 05.06.2022 and it shall be paid on monthly basis till valid offer of possession is made to the complainant.

11. In 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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RAJAN GUPTA
[CHAIRMAN]


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DILBAG SINGH SHAG
[MEMBER]