



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 856 OF 2020

Dr. Viney Kumar

....COMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.

....RESPONDENT(S)

2. COMPLAINT NO. 857 OF 2020

Davender Singh

....COMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.

....RESPONDENT(S)

3. COMPLAINT NO. 1006 OF 2020

Kiran

....COMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.

....RESPONDENT(S)

4. COMPLAINT NO. 1009 OF 2020

Naveen

....COMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.

....RESPONDENT(S)

5. COMPLAINT NO. 1043 OF 2020

Jyoti Phogat through POA Udai Singh PhogatCOMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.RESPONDENT(S)

6. COMPLAINT NO. 1090 OF 2020

Surender SinghCOMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.RESPONDENT(S)

7. COMPLAINT NO. 1170 OF 2020

Sanjay Singh SehrawatCOMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd.RESPONDENT(S)

8. COMPLAINT NO. 1259 OF 2020

Hari OmCOMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.RESPONDENT(S)

9. COMPLAINT NO. 1265 OF 2020

Kusum LataCOMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.RESPONDENT(S)



10. COMPLAINT NO. 1253 OF 2020

Naresh Kumari

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

11. COMPLAINT NO. 1207 OF 2020

Ramesh Malik & Anr.

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

12. COMPLAINT NO. 1208 OF 2020

Ramesh Malik

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

....RESPONDENT(S)

13. COMPLAINT NO. 309 OF 2021

Baljeet Malik

....COMPLAINANTS

VERSUS

Parsvnath Developers Ltd.

....RESPONDENTS

CORAM:

**Rajan Gupta
Anil Kumar Panwar
Dilbag Singh Sihag**

**Chairman
Member
Member**

Date of Hearing: 30.11.2021

Hearing: 8th (in complaint nos. 856, 857, 1006, 1009, 1043, 1090, 1207, 1208 of 2020)

7th (in complaint nos. 1170, 1259, 1265 of 2020)

6th (in complaint no. 1253 of 2020, 309 of 2021)

Present: -

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

(in complaint nos. 856, 857, 1006, 1009, 1043, 1090, 1170, 1259, 1265 of 2020)

Mr. Ramesh Malik, learned counsel for the complainants through video conference

(in complaint nos. 1207, 1208 of 2020; 309 of 2021)

None for the complainant

(in complaint no. 1253 of 2020)

Mr. Shekhar Verma, learned counsel for the respondent through video conference

ORDER (RAJAN GUPTA - CHAIRMAN)

1. This is a bunch of 13 matters pertaining to project Parsvnath City, Rohtak. Large number of contentious issues have been raised in the complaints, most important of which being admissibility of interest claimed by complainant allottees on account of delay caused by respondent promoters in offering possession of the plots. Respondents have been pleading that

because of force majeure conditions it was not possible for them to offer possession in time even though they had developed the project well in time and were in a position to offer possession within the agreed time frame. The complainants have been arguing it otherwise stating that due date of possession was in the years 2014-15 and it is entirely on account of defaults committed by respondent company that their license was not renewed and revised layout, demarcation and zoning plans were not approved which has resulted into delay in offering the possession.

2. The facts of different cases are different because area of plots, cost of plots and amounts paid by each individual allottee complainant are different, therefore, keeping in view the facts of each case separate orders may have to be passed in each respective case. However, one common question in all the cases is whether respondent promoter has indeed defaulted in offering possession in time due to their fault or was not able to offer possession in time for no fault of theirs and due to prevailing force-majeure conditions. To decide this question, today this hearing of the Authority was held.

3. In complaint no. 1253 of 2020 tilted as Naresh Kumari V/s Parsvnath Developers Ltd., vide orders dated 17.08.2021, Authority had sought certain information from the promoters to enable it to decide the aforesaid questions. The respondent-promoters have submitted an affidavit annexing therewith certain information sought by the Authority.

Since onus is upon promoters to prove existence of force-majeure conditions therefore, Sh. Shekhar Verma, learned counsel for the respondent promoters was allowed to open the proceedings with his arguments.

4. Sh. Shekhar Verma, learned Counsel submitted as follows:

(i) The respondent promoter applied for grant of license to develop a plotted colony on land measuring 118.188 acres in Sector-33 and 33A, Rohtak vide application dated 22.06.2006 and application dated 07.05.2007. Against the said applications license no. 36 of 2010 dated 07.05.2010 was granted which was valid upto 06.05.2014.

(ii) State Government Haryana commenced certain land acquisition proceedings by issuing notification dated 03.02.2008 under Section 4 of Land Acquisition Act, 1894 for development of industrial colony by HSIIDC. The respondent promoter filed objections under Section 5(a) of the Act. After the said notification declaration under Section 6 was issued on 13.12.2008 and 14.15 acres land of the project belonging to respondent promoter was also acquired. It has been submitted in writing by respondent promoters that they were expecting that their said land under acquisition would be released by the State Government under Land Release Policy. A Civil Writ Petition No. 6196 of dated 02.04.2012 was also filed by the respondent-promoter which was dismissed in limine for the reasons of delay and laches.

(iii) Since, 14.15 acres land could not be released, the same was de-licensed vide Town & Country Planning Department on 31.10.2014.

(iv) Now after de-licensing of 14.15 acres, total project area reduced to 104.038 acres. On 08.01.2015 respondent-promoter submitted revised layout plan. Since their license was valid upto 06.05.2014. They also applied for its renewal on 07.10.2015, 29.09.2017 and 22.04.2019. On 19.06.2018 their pending application for approval of revised lay out plan and renewal of the license were considered by the department, and on 23.12.2019 a revised layout plan was approved followed by approval of zoning plan dated 28.02.2020 and demarcation plan dated 17.03.2020. For three months due to outbreak of Covid-19 they could not commence the process of offering possession to the allottees which they did on 30.6.2020 after withdrawal of COVID restrictions.

(v) It has been averred that 295 conveyance deeds have already been executed and 550 allottees have settled their accounts.

(vi) Next argument of respondents is that they had completed all the development works by the year 2013-14. Sh. Shekhar Verma, learned counsel for the respondent promoters contested the observations made by Authority in para 6 (ii) of order dated 17.08.2021 passed in complaint no. 1253 of 2020 that 135 crores of EDC had been collected from allottees which the respondent failed to pay to the department. Learned counsel stated that the amount of EDC collected was ₹54.20 crores only. He further stated that the promoters had given a bank guarantee of ₹17.00 crores to Town & Country

Planning Department as security for non-deposition of the EDC. IDC however, has been fully paid.

(vii) Learned counsel Sh. Shekhar Verma further argued that it was because of aforesaid force-majeure conditions when despite repeated applications filed with Town & Country Planning Department for renewal of license and for approval of revised lay out, demarcation and zoning plans that possession of plots could not be offered to allottees in time despite having completed all works of the colony in the year 2013-14 itself. According to Sh. Verma, delay was entirely un-intentional and is on account of the time taken by Town & Country Plan Department.

5. Learned counsel Sh. Verma referred to certain clauses of builder buyer agreement executed by builders and allottees to emphasise that such unforeseen eventualities are covered in various provisions of agreements and both parties had agreed to act accordingly. He specifically referred to clause 7 and clause 8 of the builder buyer agreement (in complaint no.1253 of 2020), a gist of both these clauses as emphasised by learned counsel Sh. Verma is as follows:

(i) Only a stipulation was made that developer shall endeavour to complete internal development works of the colony within 24 months from the date of signing the agreement, and no specific date of handing over of possession was ever stipulated in the agreement or otherwise understood between the parties.

(ii) The said period of 24 months was subject to force majeure restriction or restraint from any courts, authorities or circumstances beyond the control of the developer. The date of submission of application for grant of completion certificate was agreed to be determined as the date of completion of development of the colony. No claim by way of damages or compensation could lie against the developer in case of delay in handing over possession on account of any delay for reasons beyond their control.

(iii) In clause 8 (c), it has been stipulated that in the event of delay in offering possession subject to force majeure and other circumstances, the developer had agreed to pay buyers compensation at the rate of ₹12 per sq. mtr. per month.

(iv) Clause 7 (a) provides that location and area of the allotted plot is provisional and tentative and subject to change. Developer shall have the right to change lay out plans or other development plans and they were entitled to allot plots with changed location and area to the allottees.

(v) Clause 7 (b) provides that in case allotted plot gets omitted/deleted from layout plan and no alternate plot is offered, or if the project is abandoned for any reason other than acquisition of land then developer shall be liable only to refund actual amount along with simple interest at the rate of 10%. Clause 7(c) further provides that at present there is no subsisting notification or order by Central Government or State Government regarding acquisition or requisition or otherwise for taking over

of the area in which plot is located. In case any such development takes place hereafter the same shall be at the cost and risk of buyers.

6. Sh. Shekhar Verma, learned counsel further argued that it was the responsibility of Town & Country Planning Department to ensure that before grant of license land of the project is completely free from any lien or acquisition process. Under normal procedure and practice Town & Country Planning Department gets clearance about title etc. of the land from the District Administration/District Revenue Officer. Without such a certificate issued by a District Revenue Officer license is not granted. He argued that it was on account of lapses on the part of Town & Country Planning Department that license was granted and lay out plans etc. were approved despite the fact that 14.15 acres of land of the project was notified for acquisition.

7. Sh. Ramesh Malik, Advocate, learned counsel appeared for complainants in complaint nos. 1207 of 2020, 1208 of 2020 and 309 of 2021. He submitted as follows:

(i) That when respondent company applied for grant of license and pursued their application for grant of license, they were very much aware that a portion of the project land has been notified for acquisition by the State Government. They had even filed their objections against the said land acquisition. Despite being fully aware of land acquisition process, they continued to pursue their application filed in the year 2006-2007 for grant of license, which they eventually received on 07.05.2010.

(ii) The respondent promoter was duty bound to inform the department that certain portions of their land was under acquisition. They should have requested for amendment of the application for grant of license.

(iii) More seriously they started sale of plots in the year 2009 i.e. much before the actual grant of license. In complaint no.1207 agreement was executed on 14.12.2012 fully knowing at that time the land on which plot of the complainant was situated was a disputed piece of land being a part of the acquisition process. Despite being aware that said piece of land on which the plot is located was under acquisition they went ahead with allotment. They specifically mentioned in clause 7(c) of the agreement that at present the land is free from any acquisition or dispute. Respondent therefore, completely concealed the material facts and even misrepresented to the allottee-complainant.

(iv) Concluding his arguments learned counsel Sh. Ramesh Malik stated that when promoters were fully aware of land acquisition process they should not have sold the plots. Instead, they kept accepting money from allottees and kept executing builder-buyer agreements, therefore, they cannot be granted any benefit of claimed force majeure conditions.

8. Sh. Sushil Malhotra, Advocate, learned counsel appeared in complaint nos. 856, 857, 1006, 1009, 1043, 1090, 1170, 1259, 1265 of 2020. He reiterated the arguments as have been submitted by learned counsel Sh. Ramesh Malik. He further referred to judgement of Hon'ble High Court

passed in CWP No. 6196 of 2012. Sh. Malhotra specifically referred to the orders passed by Hon'ble High Court that respondent-promoters have obtained the license by way of deliberate concealment of facts. Further the department of Town & Country Planning had started proceedings for revocation of license on the ground that petitioners had not notified the process of acquisition initiated vide the notification in question. He accordingly, reiterated that the respondents are guilty of misleading and misrepresenting to the complainant allottees.

For the aforesaid reasons Sh. Sushil Malhotra, learned counsel argued that the respondent cannot be given benefit of force majeure conditions. They have deliberately misled the complainants. They had no authority or right to allot apartments when part of the land was under acquisition. Further, it is the respondents who had defaulted in payment of EDC because of which their license was not renewed and resulted in delay in offering possession to the complainants and other allottees. Now the respondents cannot claim benefit of their own wrongs.

9. The Authority has gone through facts and circumstances of the matter. It has gone through the affidavit dated 18.10.2021 filed by respondents in complaint no.1253 of 2020. It observes and orders as follows:

- (i) As already observed, separate final orders may have to be passed in each captioned complaints depending upon the date of booking, due date of offering possession, the amount of money paid and/or if any

default have been committed by any of the parties towards making payments etc. This order is being passed only to settle the question whether benefit on account of force majeure conditions prevailing for several years claimed by the respondent is admissible or not. Accordingly, this question of law and facts, which is common to all captioned cases is being decided by this order.

(ii) Relevant facts of the matter as revealed by respondents themselves in their affidavit dated 18.10.2021 submitted in complaint no.1253 of 2020 are that an application for grant of license was filed on 22.06.2006 and 07.05.2007. Barely, 7-8 months after submitting the application for grant of license, land acquisition process was initiated by State Government authorities in respect of 14.15 acres land of the project. Respondents submitted their objections under Section 5(a) of the Land Acquisition Act. Even though the date of filing of such objections has not been stated in the affidavit declaration under Section 6 of the Act was issued on 13.12.2008. Accordingly, it is to be presumed that objections were filed prior to that. Finally, the land acquisition award was issued in the months of July and August, 2009. The license to the project was granted in May, 2010 i.e. 9-10 months after announcement of award. Despite acquisition of part of project land, respondents did not make any effort to revise their application for grant

of license, because now the area in their ownership had reduced from 118.188 acres to 114.038 acres.

(iii) Respondents have stated that they were expecting release of their land from the process of acquisition. It is observed that release of acquired land cannot be claimed as a matter of right. Expectations of the respondent therefore were unfounded. Denial of the request would necessarily require amendment of license and amendment of the of the layout plans etc.

(iv) Despite being fully aware of the above facts and circumstances, respondents kept selling the plots and kept executing BBA. The date of execution BBAs in the captioned complaints is tabulated below:

S.No.	Complaint no.	Date of Builder Buyer Agreement
1.	856 of 2020	10.07.2012
2.	857 of 2020	20.03.2012
3.	1006 of 2020	14.08.2012
4.	1009 of 2020	20.03.2012
5.	1043 of 2020	14.06.2012
6.	1090 of 2020	31.12.2012
7.	1170 of 2020	16.11.2011
8.	1259 of 2020	10.10.2012
9.	1265 of 2020	25.07.2012
10.	1253 of 2020	28.06.2012
11.	1207 of 2020	14.12.2012
12.	1208 of 2020	14.12.2012
13.	309 of 2021	Not executed



(v) The Authority observes that respondent-promoters executed aforesaid agreements being fully aware that part of the project land in question was acquired and it would necessarily lead to revision of approved plans. More seriously plots were even allotted in the land which was finally acquired by the Government. No possible justification can be found for such an act on the part of respondents.

(vi) As also admitted by respondent-promoter 14.15 acres acquired land was de-licensed by Town & Country Planning Department on 31.10.2014 and consequentially respondent-promoter submitted revised lay out plans for land measuring 104.038 acres on 08.01.2015. The promoters have not clearly stated reasons for non-approval of their revised layout etc. plans till 23.12.2019, but from the various orders passed by the Authority, both in this complaint matter as well as in registration matter relating to this colony, Town & Country Planning Department did not approve revised lay out plans because the license of the colony had expired on 06.05.2014 and the license was not renewed on account of default in making payment of External Development charges. More seriously the payable external development charges had been collected by respondents from allottees. Even though Authority in its orders dated 17.08.2021 passed in complaint 1253 of 2020 had observed that ₹135 crores are due to be paid by respondent towards EDC, respondent promoter in their affidavit has admitted that ₹54.20

crores was payable as EDC and was collected as a part of sale consideration from allottees. The Authority observes that no justification whatsoever is available for not depositing amount of EDC charges collected from allottees, to State Government. This money never belonged to promoters. This money is akin to taxes of State Government and after having been collected from allottees has to be promptly deposited with authorities concerned.

(vii) It is on account of the default in making payment of EDC that the license of colony was not renewed and consequently layout, zoning and demarcation plans were not approved.

(viii) In the face of aforesaid facts and circumstances Authority is unable to accept the arguments of respondent-promoter that they should be given benefit of force majeure conditions because it was on account of delay caused by Town & Country Planning Department that their revised lay out plan were not approved and accordingly offer of possession could not be made to the allottees. This argument squarely stands refuted in the face of facts narrated above.

10. On account of aforesaid findings, Authority would consider it just and appropriate that complainants are entitled to interest on the amount paid by them from the due date of offering possession upto the actual date of offer of possession.

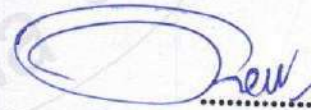
In none of the BBAs placed before the Authority precise due date of delivery of possession has been mentioned. Clause 8(a) of the agreement however, stipulates that development works would be completed within 24 months. It can therefore be presumed that due date of delivery should be calculated as two years from the date of executing BBAs.

11. Now, the Authority will take up facts of each individual case to determine the amounts receivable and payable by respective parties by duly incorporating therein delay interest admissible. Both the parties are directed to submit their calculation of payable delay interest. The respondents shall also issue a revised statement of accounts to the complainants duly incorporating therein delay interest admissible to them. Respective parties are directed to take action accordingly.

12. Cases are adjourned 20.01.2022.



RAJAN GUPTA
[CHAIRMAN]



ANIL KUMAR PANWAR
[MEMBER]



DILBAG SINGH SHAG
[MEMBER]