

**RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR**

Complaint No. RAJ-RERA-C-2023-6030

Dinesh Agrawal

Complainant

Versus

Parsvnath Developers Limited

Respondent

Present

Hon'ble Shri R.S. Kulhari, Adjudicating officer

Mr. Dinesh Agrawal, complainant present in person through V.C.

Mr. Kailash Tailor, Advocate present on behalf of the Respondent.

Date: 07.05.2024

ORDER

The present complaint has been filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as 'RERA Act') read with Rule 36 of the RERA Rules, 2017 for seeking compensation.

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Complainant No. 2023-6030


(R. S. KULHARI)
Adjudicating Officer
Rajasthan Real Estate Regulatory Authority
Jaipur





2. The facts of the matter in nutshell as gathered from records reveal that the complainant booked a shop bearing number GF-10 in the project of respondent named as "**Parsvnath City Centre Bhiwadi**" against the basic sale consideration of Rs. 22,53,875/-. An agreement for sale was executed on 31.01.2014 purporting to be 'commercial space agreement' between the parties wherein the respondent has accepted to have received Rs. 12,95,978/- till then and date of delivery was agreed to be 30 months from the commencement of construction or from the date of booking whichever is later. The complainant further tendered some amounts on various occasions making total of Rs. 25,18,796/- which was more than the basic price, however it included the other charges as agreed between the parties.
3. It appears that the project was not completed in time so the complainant filed a complaint bearing number 2022-4805 before the Hon'ble RERA Authority for refund of amount with interest and compensation. The Hon'ble RERA Authority vide its order dated 03.06.2022 observed that the project was incomplete till the month of December 2015 as no completion certificate was obtained at that time and accordingly directed the respondent to refund the deposited amount alongwith interest @ 9.4% p.a. from expected date of delivery excluding moratorium period. Further, a liberty was given to the complainant to approach before this forum with regard to claim for any compensation.
4. Thereafter, the complainant filed the present complaint for compensation with the averment that the respondent has caused inconvenience, great loss and damages besides mental

tension and loss of value of money invested by him. Therefore, he prayed for compensation as well as cost of litigation.

5. The respondent in its reply has not disputed the booking of the shop, execution of agreement for sale and receipt of amount from the complainant. However, it was submitted that the RIICO vide its order dated 02.12.2015 allowed the commercial activities at the project site, so the respondent sent a possession letter dated 21.12.2015 to the complainant with final statement of account. It was also stated that the Hon'ble RERA Authority has allowed the interest and the respondent has offered the possession so no further compensation can be granted. It was also emphasized that due to various unforeseen reasons like hardship in real estate market, impact of Covid-19 etc. have adversely affected the activities of commercial space. Therefore, the project in question could not be made operational in its true sense and spirit.
6. Heard the complainant and the learned counsel for the respondent and perused the records.
7. The complainant present in person and has submitted that the possession of the shop was to be given on or before the month of December 2015 including condition of force majeure. But the project was not completed during that period and the respondent pressurized him to pay more amount than the agreed sale consideration. The Hon'ble RERA Authority has allowed interest @ 9.4% per annum and that too from 01.08.2016 which is evident from the recovery certificate issued in compliance of the said order. However, no refund has been made so far. No interest has been allowed from the date of



deposit on the amount till 31.07.2016. Thus, the complainant has faced financial loss on the deposited amount. He has lost the opportunity of having his own shop. Had this amount been invested elsewhere he would have got at least 12 to 15% return in any form. Therefore, adequate compensation alongwith cost of litigation be awarded.

8. On the contrary, learned counsel for the respondent while reiterating the contents of the reply canvassed that the Hon'ble RERA Authority while considering all the aspects has allowed the interest on the deposited amount and the complainant has not shown any other loss by way of cogent pleading. Therefore, he is not entitled to get any additional amount in the form of compensation.

9. I have given my thoughtful consideration to the rival contentions of the parties and considered the material available on record.

10. There is no dispute between the parties with regard to the booking of the shop, deposited amount and agreed date of possession. This is also a matter of record that the Hon'ble RERA Authority has found that the project was not completed in time and latest date for delivery of possession was 31.07.2016 and accordingly the interest was allowed @ 9.4% per annum w.e.f. 01.08.2016 on the deposited amount as is evident from the recovery certificate submitted in file.

11. It is settled proposition of law that once the agreed date for possession is over, an unqualified right of the complainant triggers on that day for getting the possession otherwise the complainant may exercise the option for getting the refund alongwith interest and compensation or if he intends to get the



possession then he may claim interest for every month delayed period.

12. In the instant case, the agreed date for possession was 30 months from date of booking which comes to be 31.07.2016 even if reckoned from date of agreement. A letter dated 21.12.2015 sent by the promoter allegedly stating to be letter for possession does not render any assistance to the promoter. Because at that time neither the project was completed nor any completion certificate was obtained. Thus, it is proved that the project was incomplete on the agreed date of possession.
13. The promoter has failed to deliver the possession even after availing the period of force majeure i.e. upto July 2016. No cogent reasons much less the convincing one has been shown for non-completion of the project in time. Since the period was over in the year 2016 so at that time neither the impact of Covid-19 was there in picture nor any other factors shown by the promoter were there to justify the delay. Thus, the promoter has violated the provision of Section 18 of the RERA Act which has entitled the complainant to get the adequate compensation.
14. So far as the assessment of quantum of compensation is concerned, this Tribunal has to keep in mind the various factors narrated in Section 72 of the RERA Act that too are illustrative only and even beyond that various ancillary aspects may be considered. While considering the compensation this Tribunal may consider the financial loss, loss of opportunity, physical and mental harassment, cost of litigation amongst other factors.
15. In the case at hand, the Hon'ble RERA Authority has allowed interest @ 9.4% p.a. from 01.08.2016 whereas the amount



remained with the promoter even prior to that date and no interest was granted from the date of the deposit of the amount. Since the complainant has withdrawn from the project and is getting refund only, therefore, in such a case, reliefs should be restitutionary and compensatory, meaning thereby the complainant should be granted such amount of compensation which may be said to be sufficient for restitution of the complainant in its original position.

16. The promoter has utilized the funds deposited by the complainant in one way or the other and has got the premium over it. If no compensation in the form of interest or otherwise is allowed from the date of deposit it would definitely cause a financial loss to the complainant and undue enrichment of the promoter. Had the promoter borrowed this amount from any other financial institution it would have paid more than 12% p.a. interest on it. Therefore, by striking the balance between both the parties I deem appropriate to allow interest @ 12% p.a. in the form of compensation qua the financial loss on the deposited amount from the date of deposit till 31.07.2016.

17. Besides, the Hon'ble RERA Authority has allowed interest @ 9.4% p.a. with effect from 01.08.2016 till the date of realization. But this would also not recoup the financial loss caused to the complainant. As a general trend of market the amount invested anywhere, fetches more than 12% p.a. return in normal course. If this difference of interest is not allowed it would be a great financial loss to the complainant. Therefore, it would be proper to allow interest @ 2.5% in the form of compensation from the



date of 01.08.2016 till the date of payment on the deposited amount.

18. Apart from this, the complainant has lost the opportunity of appreciation in cost of the shop and has also deprived of having his own shop for business purpose. He has suffered lot of physical and mental harassment because of deficiency in service caused by the promoter and for no fault on the part of the complainant. Thus, the complainant is also entitled to get Rs. 1,00,000/- as compensation on these counts.

19. Further, the complainant has incurred expenses towards cost of litigation by filing the complaint before the Hon'ble RERA Authority as well as before this Tribunal. Therefore, he is entitled to get the cost of litigation which is quantified to be Rs. 20,000/-.

20. Accordingly, the complaint is allowed in the following manner:-

- (i) The respondent is directed to pay interest @ 2.5 % p.a. simple as compensation on the total deposited amount from 01.08.2016 till the date of payment in addition to the interest paid by the Hon'ble RERA Authority.
- (ii) The respondent shall also pay Rs. 1,00,000/- on account of deficiency in service, loss of opportunity and physical and mental agony caused to the complainant.
- (iii) The respondent shall further pay Rs. 20,000/- towards cost of litigation to the complainant.
- (iv) The compliance of this order shall be made within 45 days, failing which the respondent shall have to pay interest @

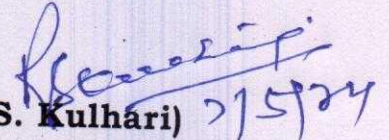




6% p.a. on the total due and recoverable amount under this order from today till the date of payment.

The order be uploaded on the website of RERA and also sent to both the parties. File be consigned to records.

Date - 07.05.2024


(R.S. Kulhari) 07/05/24
Adjudicating Officer

(R. S. KULHARI)
Adjudicating Officer
Rajasthan Real Estate Regulatory Authority
Jaipur