



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

1. COMPLAINT NO. 200 OF 2020

Anuradha JainCOMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.RESPONDENT(S)

2. COMPLAINT NO. 201 OF 2020

Pawan JainCOMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.RESPONDENT(S)

3. COMPLAINT NO. 202 OF 2020

Pawan JainCOMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.RESPONDENT(S)

4. COMPLAINT NO. 203 OF 2020

Pradeep JainCOMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.RESPONDENT(S)

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5. COMPLAINT NO. 204 OF 2020

Praveen Kumar Jain

....COMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

6. COMPLAINT NO. 205 OF 2020

Sanjay Aggarwal

....COMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

7. COMPLAINT NO. 206 OF 2020

Rajender Kumar Gupta

....COMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

8. COMPLAINT NO. 207 OF 2020

Suresh Kumar Gupta

....COMPLAINANT

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

CORAM:

**Rajan Gupta
Dilbag Singh Sihag**

**Chairman
Member**

Date of Hearing: 16.08.2022

Hearing: 7th (in all complaints)

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Present: - Mr. Vivek Sethi, counsel for the complainants through video conference
Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (RAJAN GUPTA - CHAIRMAN)

1. Cases were heard at length on 03.03.2022 and a detailed order was passed stating therein tentative view of the Authority that relief of refund as sought by complainants deserve to be granted. Said order dated 03.03.2022 is reproduced here:

“1. Captioned complaints are taken up together as grievances involved are similar and directed against same project of the respondent.

2. While perusing case files, it is observed that complainants in bunch of captioned complaints, sought refund of their respective amounts deposited by them against booking of plots in respondent's project under 'Present and Future Scheme' in or around the years 2004-2005. Complainants have claimed that booking was made in respondent's project named 'Parsvnath City Sonapat'. The payments made by the complainants are as follows:

S.No.	COMPLAINT NO.	AMOUNTS PAID BY COMPLAINANTS
1.	200 OF 2020	₹11,20,000/-
2.	201 OF 2020	₹7,50,000/-
3.	202 OF 2020	₹10,50,000/-
4.	203 OF 2020	₹7,20,000/-
5.	204 OF 2020	₹10,00,000/-
6.	205 OF 2020	₹10,80,000/-
7.	206 OF 2020	₹10,80,000/-
8.	207 OF 2020	₹30,23,885/-

Complainants have paid considerable amounts to the respondent but respondent failed to execute builder buyer agreements with them. Moreover, he has not allotted plots to

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them even after receiving substantial amounts from them except in complaint bearing no. 207 of 2020, wherein respondent vide letter dated 22.09.2009 provisionally allotted a residential plot bearing no. B-3300 of 205 sq. yards.

It is pertinent to be mentioned that in all the complaints, respondent has admitted the payments made by the complainants in his replies and further stated that booking was made by the complainants in 'Present and Future project'. No project was specified except in complaint no. 207 of 2020 where provisional allotment was made. Furthermore, as per clause 7 of affidavit cum undertaking and indemnity executed by complainants (in all complaints except in complaint no. 207 of 2020), there is categorical reference that in case, no plots are allotted to them in present and future project, then complainants would accept refund of their respective deposited money along with simple interest @9% pa. Respondent in his reply has also expressed his willingness to offer alternate property to complainants subject to their mutual consent.

3. This Authority had kept sine die all refund cases for more than a year or so on the account of disputes regarding jurisdiction of Authority to deal with such cases. Now law on the question has been settled by Hon'ble High Court and by Hon'ble Supreme Court as well. Besides, same has been endorsed by Hon'ble High Court again vide its orders dated 13.01.2022. This Authority has also passed a resolution No. 6705-6709 on the basis of which it has started hearing these complaints whereby relief of refund has been sought. The relevant part of the resolution of Authority is reproduced below:-

“4. The Authority has now further considered the matter and observes that after vacation of stay by Hon'ble High Court vide its order dated 11.09.2020 against amended Rules notified by the State Government vide notification dated 12.09.2019, there was no bar on the Authority to deal with complaints in which relief of refund was sought. No stay is operational on the Authority after that. However, on account of judgment of Hon'ble High Court passed in CWP No. 38144 of 2018, having been stayed by Hon'ble Supreme Court vide order dated 05.11.2020, Authority had decided not to exercise this jurisdiction and had decided await outcome of SLPs pending before Hon'ble Apex Court.



Authority further decided not to exercise its jurisdiction even after clear interpretation of law made by Hon'ble Apex Court in U.P. matters in appeal No(s) 6745-6749 of 2021 - M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc. because of continuation of the stay of the judgment of Hon'ble High Court.

It was for the reasons that technically speaking, stay granted by Hon'ble Apex Court against judgment dated 16.10.2020 passed in CWP No. 38144 of 2018 and other matters was still operational. Now, the position has materially changed after judgment passed by Hon'ble High Court in CWP No. 6688 of 2021 and other connected matters, the relevant paras 23, 25 and 26 of which have been reproduced above

5. Large number of counsels and complainants have been arguing before this Authority that after clarification of law both by Hon'ble Supreme Court as well as by High Court and now in view of judgment of Hon'ble High Court in CWP No.(s) 6688 of 2021, matters pending before the Authority in which relief of refund has been sought should not adjourned any further and should be taken into consideration by the Authority.

Authority after consideration of the arguments agrees that order passed by Hon'ble High Court further clarifies that Authority would have jurisdiction to entertain complaints in which relief of refund of amount, interest on the refund amount, payment of interest on delayed delivery of possession, and penal interest thereon is sought. Jurisdiction in such matters would not be with Adjudicating Officer. This judgment has been passed after duly considering the judgment of Hon'ble Supreme Court passed in M/s Newtech Promoters and Developers Pvt. Ltd. Versus State of UP and others etc.

6. In view of above interpretation and reiteration of law by Hon'ble Supreme Court and Hon'ble High Court, Authority resolves to take up all complaints for consideration including the complaints in which relief of refund is sought as per law and pass appropriate orders. Accordingly, all such matters filed before the Authority be listed for hearing. However, no order

will be passed by the Authority in those complaints as well as execution complaints in which a specific stay has been granted by Hon'ble Supreme Court or by Hon'ble High Court. Those cases will be taken into consideration after vacation of stay. Action be initiated by registry accordingly.”

5. Since, the basic issue of jurisdiction stands settled, therefore, Authority has started hearing those complaints relating to refund which were kept sine die.

6. In the captioned complaints, booking was made in present and future scheme, no agreement has been executed till date, complainants are interested to withdraw from the project and want refund of the amounts deposited by them, respondent is interested to offer alternate unit in its other projects which clearly indicates that respondent is not in a position to complete the project in question and hand over the possession of the plots to the complainants. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted. Accordingly, Authority tentatively proposes to grant relief of refund to the complainant along permissible with interest as per Rule 15 of HRERA Rules, 2017. Since, these refund matters have been taken up for the first time after adjournments sine-die, matters will be disposed of on next date after affording another opportunity to the respondents to argue their case if they so desire.

7. Cases are adjourned to 17.03.2022.”

2. The matters were adjourned to giving an opportunity to respondent to put forward their arguments. Learned counsel for respondent reiterated her arguments as were submitted in writing and also argued that respondent does not have any plot available with them to be offered to complainants, but is ready to refund the amount.

3. In view of above, Authority finds it to be a fit case for allowing refund in favour of complainants. Therefore, as per provisions of Section 18

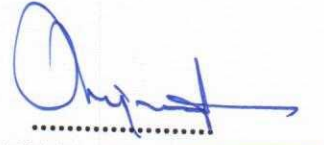
of the Act, relief of refund as sought by the complainants deserve to be granted. The view already expressed by Authority on 03.03.2022 stands confirmed. Hence, Authority directs respondent to refund the complainants the amounts paid by them along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10% (8.00% + 2.00%) from the date amounts were paid till today.

4. Authority has got calculated the interest payable to the complainants and accordingly, total amount payable to the complainants including interest calculated at the rate 9.80% is depicted in table below:

S.No.	Complaint no.	Amounts paid by complainants	Interest Accrued till 16.08.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	200 of 2020	₹11,20,000/-	₹19,08,142/-	₹30,28,142/-
2.	201 of 2020	₹7,50,000/-	₹12,60,438/-	₹20,10,438/-
3.	202 of 2020	₹10,50,000/-	₹17,90,466/-	₹28,40,466/-
4.	203 of 2020	₹7,20,000/-	₹12,29,339/-	₹19,49,339/-
5.	204 of 2020	₹10,00,000/-	₹17,05,342/-	₹27,05,342/-
6.	205 of 2020	₹10,80,000/-	₹18,33,654/-	₹29,13,654/-
7.	206 of 2020	₹10,80,000/-	₹18,33,258/-	₹29,13,258/-
8.	207 of 2020	₹30,23,885/-	₹43,80,523/-	₹74,04,408/-

Respondent is directed to make entire payment to the complainants within 90 days from the date of uploading of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

5. Complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.



RAJAN GUPTA
[CHAIRMAN]



DILBAG SINGH SIHAG
[MEMBER]

