



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2227 of 2022
Date of filing:	24.08.2022
Date of first hearing:	18.10.2022
Date of decision:	21.12.2022

Shri J.B. Jain,
S/o Late Sh. Ganpat Rai,
R/o 16-B, Sector 7, Pocket-1,
SFS Flats, Dwarka,
New Delhi-110075

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.
Regd Office: Ground Floor,
Arunachal Building, 19,
Barakhamba Road,
New Delhi- 110001

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Hearing: 2nd

Geeta Rathee

Present: - None for the complainant

Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 24.08.2022 has been filed by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Pleasant, Dharuhera, Rewari
2.	RERA registered/not registered	Un-registered
3.	DTCP License no.	129 to 138 of 2007 dated

		03.03.2007
	Licensed area	112.956 Acres
4.	Date of application by complainant	11.04.2006
5.	Unit no.	T8-303
6.	Unit area	1855 sq. ft.
7.	Date of provisional allotment	14.03.2007
8.	Date of builder buyer agreement	Not executed
9.	Basic sale price	₹33,39,000/-
10.	Amount paid by complainant	₹4,50,000/-
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainant in the year 2006 made an application to respondent company for registration of a residential apartment of three bedrooms in their future project along with an advance registration payment of ₹4,50,000/-. Complainant has annexed payment receipt as Annexure C-3 with complaint. Vide letter dated 14.03.2007, complainant received a provisional allotment of residential flat no. T8-303 in a project named 'Parsvnath Pleasant, Dharuhera, Rewari' being developed by respondent. Copy of said letter is annexed with complaint as Annexure C-4. After long duration from the date of booking respondent sent flat buyer agreement to the

complainant but complainant was not willing to make an agreement with the respondent due to false perception about the above said project, so said agreement was never executed between the parties. It has been submitted that as per clause 10(a) of builder buyer agreement, construction of apartment was to be completed within 36 months plus grace period of six months. Even otherwise the application of advance registration for a residential apartment provides as pre clause (c) that in the event residential apartment is allotted after six months, simple interest @9% per annum shall be paid to complainant for period delayed beyond six months on the amount paid by complainant till such time he is allotted a residential apartment or adjusted against the price of the residential apartment to be allotted to him. It is has been submitted that respondent provided the provisional allotment to the complainant on 14.03.2007 i.e after 11 months.

4. That, the complainant had lost faith in respondent and had sent a letter dated 19.02.2009 to respondent stating that it failed to allot a plot to him, therefore he is not interested in the project and thus amount of ₹4,50,000/- be refunded to him with interest. Copy of said letter is annexed as Annexure C-7 with the complaint.
5. That, the respondent sent a letters dated 23.02.2009 and 17.03.2009 and instead of refunding the amount, respondent compelled the

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complainant to make payment of ₹3,84,750/-. Copies of said letters are annexed as Annexure C-8 (colly) with complaint.

6. That, complainant sent several letters dated 20.01.2011, 02.08.2011 and 07.09.2011 to respondent for ascertaining the status of the project but no reply was given by respondent. Copies of said letters are annexed as Annexure C-10 (colly).
7. Complainant has alleged that construction of proposed tower namely T-8 has not been started and till date no foundation has been laid and there is no possibility that project will be completed in near future. No offer of possession has been made despite lapse of more than 16 years period from the date of booking. Legal notice dated 10.02.2012 (Annexure C-11) was also sent to the respondent asking for refund of the amount deposited but respondent did not reply to said notice. Thereafter complainant sent consecutively three reminders dated 12.04.2013, 17.12.2013, 15.01.2014 to respondent of refund of the amount but in vain. Copies of said reminders are annexed as Annexure C-12 (colly) with the complaint.
8. That, complainant received a letter dated 05.02.2014 from respondent mentioning about statement of account of aforesaid flat and asked for balance amount of flat along with interest. It was admitted by respondent that construction was not yet commenced but intention of

respondent was to extort money from the complainant. Hence, present complaint has been filed.

C. RELIEF SOUGHT

9. The complainant in his complaint has sought following reliefs:

- (i) Allow the present complaint by directing the respondent to refund of amount i.e. ₹4,50,000/- along with interest @18% per annum from the date of booking till the realization of amount;
- (ii) Direct the respondent to pay the compensation in terms of mental tension, mental agony, harassment and damages to the tune of ₹2,00,000/-.
- (iii) Litigation charges @₹1,00,000/-; and
- (iv) Pass any other order, which may deem fit and proper by this Hon'ble Court in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.11.2022 pleading therein:

10. That, the present complaint pertains to un-registered project of the respondent therefore, in view of the latest judgment by Hon'ble Supreme Court in the case '*Newtech Promoters and Developers Pvt. Ltd. Versus state of U.P. and others*' (2021) SCC Online SC 1044, this Hon'ble Authority would not have the jurisdiction to entertain the

present complaint filed under the Real Estate (Regulation and Development) Act, 2016.

11. That, the present complaint is grossly barred by limitation and this Hon'ble Court does not have jurisdiction to entertain a time barred claim. Moreover, in absence of any pleadings regarding condonation of delay, this Hon'ble Court could not have entertained the complaint in present form. In recent judgment by the Hon'ble Supreme Court in the case of '*Surjeet Singh Sahni vs. State of U.P and others*', 2022 SCC online SC 249, the Hon'ble Apex Court has been pleased to observe that mere representations does not extend the period of limitation and the aggrieved person has to approach the court expeditiously and within reasonable time. In the present case the complainant is guilty of delay and laches, therefore, his claim should be dismissed.
12. That, there is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.
13. Respondent in his reply has admitted the fact of booking of apartment, the agreed sales consideration, the area and location of the apartment as well as the payment of ₹4,50,000/- made by the complainant. That, on 25.03.2008 and 02.08.2008 letters were sent to the complainant along with two copies of the flat buyer agreement where complainant

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was requested to send the signed agreement along with two passport size photographs. However, complainant never returned the signed agreement. Respondent has called complainant a chronic defaulter in making timely payments despite issuance of several reminders.

14. That, with a view to achieve early completion, flat no. was relocated from T8-303 to T-16-402 having same area and complainant was informed about the same vide letter dated 09.05.2017. Said letter is annexed as Annexure R-5 with reply.
15. The respondent has further submitted that in the year 2007, respondent has been granted license of the project bearing no. 129 to 138 of 2007 for construction of residential colony on an area measuring 112.956 acres which was valid upto 02.03.2016. It has been submitted that basic facilities and amenities like roads, electricity, water, sewage, storm water etc. are duly available at site and respondent has already obtained all the necessary approvals from the competent authorities. Further, OHSR & 2 nos. of tubewells; septic tank and STP has already been arranged for the allottees who have been residing. Respondent had already applied for the application of renewal of license which was still pending before the DTCP, Haryana. On 25.05.2016, Office of Senior Town Planner (STP), Gurgaon had confirmed to DTCP, Haryana that all the development works of the project site as per approved layout plan are complete. On 21.02.2021, inspection visit at

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project site was conducted by learned CTP, HRERA, Panchkula and the observations noted by learned CTP were submitted to Hon'ble Authority. Further, it has been contended that time is not essence of the contract and respondent is trying to complete the project. Respondent has further contended that there is no intentional delay on his part, rather project has been delayed for the reasons beyond his control. Respondent company is putting his best endeavours to streamline and complete the project. In brief, respondent has raised certain technical objections but has admitted all the facts alleged by complainant.

E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

16. During oral arguments learned counsel for the respondent M/s Parsvnath Developers Ltd. reiterated arguments as were submitted in writing. Learned counsel for respondent further stated that basic infrastructure and facilities have already been developed at site and number of families have been residing happily. Therefore, this is not an abandoned project. Respondent is trying to complete the remaining project and make offer of possession of units to allottees. She further stated that allowing refund at this stage will hamper progress of the project.

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F. JURISDICTION OF THE AUTHORITY

17. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.1 Territorial Jurisdiction

As per notification no. 1 /92/2017-TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Rewari district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

18. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

19. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes as follows:
- (i) The plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in complaint case no.

191 of 2020 titled '*Mrs. Rajni & Mr. Ranbir Singh versus M/s Parsvnath Developers Ltd.*' and same is followed in present cases as well.

(ii) That the license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. Booking of the apartments have been done from the year 2006 onwards. As per the information received from project branch of this Authority, this project of the respondent is in a serious difficulty. They have applied for registration of project with RERA being an ongoing project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken place for the last over six years. In its project jurisdiction, this Authority has passed following order dated 22.03.2021:

"1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.

2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his

report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent company may obtain a copy of the report from the registry of the Authority if they so desire.

3. Opening the arguments Shri Shekhar Verma, Advocate, learned counsel for the promoter-developers reiterated that upon filing of an application for registration the Authority is duty bound to register the project. In support of his contentions he drew the attention of the Authority towards provisions of Section 5 of the RERA Act, 2016 and stated that as per law, the Authority is duty bound to either register the project within a period of 30 days or reject the application for reasons to be recorded after giving an opportunity to be heard to the promoter. Further, if the Authority fails to grant registration or to reject the application within a period of 30 days, the project shall be deemed to have been registered.

4. The Authority does not agree with the contentions of the learned counsel Shri Shekhar Verma for the reasons that the Authority is not duty bound to register the project of a promoter who is defaulter on multiple counts and whose license has not been renewed by the Town & Country Planning Department. Further, if the promoter has failed to complete the project for more than a decade and no construction work is taking place for past 7-8 years, and more importantly there is no hope for scope for its recommencement in near future, the Authority cannot register such a project. Registration of a project implies that the Authority has satisfied itself about credentials of a promoter and it is satisfied that the project will be completed within the stipulated time frame. Registration of a project by the Authority is an assurance to all future allottees and investors that the Authority will ensure that their money is safe and the project will be completed in time. In this case the promoters have yet to pay 127 crores EDC to the State Government which they are failing to pay last

many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arranged by the promoters for recommencing the construction activities. Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these reasons, it cannot and should not register the project at this stage.

6. The Authority after consideration is of the view of the facts of the matter that application filed by the promoters is liable to be rejected. In the event of the application being rejected, alternate options of handing over of the project to the association of allottees can be explored. However, before resorting to this option one last opportunity is granted to the promoters to arrange funds for recommencing of the project construction and also submit monthly plan for its execution. If by the next date adequate funds for commencing construction work are not put in the escrow account and a plan of action for completion of the project is not submitted, the Authority will be constrained to issue a show cause notice for rejection of the application.

7. Adjourned to 03.05.2021."

(iii) Authority has offered numerous opportunities to respondents to commence development works of the project. Repeated directions have been given to them to deposit some money in the Escrow Account but respondents have failed to comply with any of the orders. Respondents have been making repeated assurances but have been failing to keep them.

(iv) Further fact of the matter is that due date of offering possession was 2011. Already delay of more than 11 years has taken place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if respondent had commenced its development or an application for grant of occupation certificate was filed. On the contrary, in this case development is not taking place at all, nor is there any plan of action for commencing it. On account of multiple defaults on the part of respondent, Authority has not even registered the project. In fact, a thought process is going on to hand over the project to association of allottees, which in other words mean that Authority considers that respondents will not be able to complete the project at their level.

20. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of complainant. Though the complainant has sought that interest be allowed @18% however same cannot be allowed as interest can only be awarded in terms of RERA Act and HRERA Rules. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (1) of Section 18 or the promoter fails to give possession of the apartment/plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

21. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 21.12.2022 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

23. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;


Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹4,50,000/- 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 10.60% (8.60% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.60% till the date of this order and said amount works out to ₹12,47,047/- as per detail given in the table below:


S.No.	Principal Amount	Date of payment	Interest Accrued till 21.12.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹4,50,000/-	11.04.2006	₹7,97,047/-	₹12,47,047/-
Total	₹4,50,000/-		₹7,97,047/-	₹12,47,047/-

I. DIRECTIONS OF THE AUTHORITY

Respondent is directed to make the entire payment of ₹12,47,047/- within 90 days from the date of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

24. The complaint is, accordingly, disposed of. File be consigned to the record room and order be uploaded on the website of the Authority.


 Dr. GEETA RATHEE SINGH
 [MEMBER]


 NADIM AKHTAR
 [MEMBER]