



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1433 of 2022
Date of filing:	27.06.2022
Date of first hearing:	09.08.2022
Date of decision:	20.12.2022

Davinder Singh,

R/o House no. 213/H,

Bhai Randhir Singh Nagar, Ludhiana-141001

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd. through its Managing Director,

Office: 6th floor, Arunachal 19,

Barakhamba Road,

New Delhi -110001

....RESPONDENT(S)

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 20.12.2022

Hearing: 3rd

Geeta Rathee

Present: Ms. Antara Mishra, proxy counsel for the complainant through video conference
Ms. Isha, counsel for the respondent

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 27.06.2022 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 fulfil 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 and unit booked, the details of sale consideration, the amount paid by the complainants have been detailed in the following table

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Preston, Sonapat
2.	RERA registered/not registered	Registered (132 of 2017)
3.	DTCP License no.	1205-1206 of 2006
4.	Date of application by complainant	08.03.2008

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5.	Unit no.	T5-1001, 10 th Floor
6.	Unite area	1265 sq.ft.
7.	Date of builder buyer agreement	22.04.2008
8.	Basic sale price	₹22,35,850/-
9.	Amount paid by complainant	₹13,55,892.50/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of the complainant's case are that complainant booked a flat bearing No.T5-1001, 10th floor, having an approximate area of 1265 sq. ft. in project named 'Parsvnath Preston, Sonapat' in the year 2008 by paying booking amount of ₹1,11,792/-. Complainant had paid a sum of ₹13,55,892.50/- by the year 2009 against basic sale price of ₹22,35,850/- to the respondent. Complainant has annexed copies of payment receipts as Annexure-III(colly).
4. As per clause 10(a) of flat buyer agreement executed between the parties on 22.04.2008, respondent was under an obligation to hand over the possession of the flat within a period of 36 months with grace period of 6 months, whereas approximately 11 years have lapsed from deemed date of possession but respondent has miserably failed to complete the project and to handover possession of the flat to the

complainant. Copy of builder buyer agreement has been annexed with the complaint as Annexure-II. Further, complainant has come to know that the construction of the project is still pending and development of the project is into doldrums and project is far from completion. No offer of possession has been made despite lapse of more than 11 years from deemed date of possession. Hence, present complaint has been filed.

C. RELIEF SOUGHT

5. The complainant in his complaint has sought following reliefs:
- (i) Direct the respondent to refund the entire amount collected from the complainant towards the consideration of the flat along with interest @18% p.a. on the amount paid by them from the date of each deposit of the amount till it is actually returned to the complainant.
 - (ii) Direct the respondent company to provide mental agony of ₹10,00,000/-.
 - (iii) Grant a sum of ₹50,000/- (rupees fifty thousand only) as costs for this complaint to complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Respondent has filed his detailed reply on 10.08.2022 admitting the fact of booking of the apartment, the agreed sales consideration, the area and location of the apartment as well as payment of ₹13,55,892.50/- made by the complainant. Respondent has however called the complainant a

chronic defaulter in making payment as per payment plan even after receiving various reminder letters from him. It has been contended that EDC, IDC, conversion charges etc have been paid in full to the competent authority.

7. It has been contended that project is being developed in terms of statutory approvals granted by competent authority. License no. 1205-1206 of 2006 has been issued by the Department of Town & Country Planning, Haryana and respondent has applied for renewal of license for the period from 06.10.2019-05.10.2024 vide request letters dated 15.07.2021. It has also been contended that there is no intentional delay on the part of respondent and project has been delayed for reasons beyond the control of respondent. However, respondent has been putting its best efforts to complete the project so as possession may be offered to the respective buyers.
8. It has further been contended that if present complaint is allowed then it will not only affect the interest of the allottees but it will also affect the project of the respondent company. Further 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.

9. Furthermore, it has been contended by respondent that 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.

**E. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT**

10. During oral arguments learned counsel for both the parties reiterated their arguments as were submitted in writing.

F. JURISDICTION OF THE AUTHORITY

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

6 G. Rathore

F.1 Territorial Jurisdiction

As per notification no. 1 /92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be whole of 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.

7 *G. Ramesh*

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

12. 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

13. The Authority has gone through the rival contentions. In light of the background of the matter as raptured 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) Due date of offering possession was 2011. Already delay of approximately 11 years has taken place and the project is yet not

complete, nor there is any plan of action for completing it in near future. There is already an inordinate delay of 11 years, therefore the allottee, who had invested his hard earned money in the project cannot be forced to wait endlessly.

Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

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The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. For these reasons, a case is clearly made out to allow relief of refund as sought by 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."

14. 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.
15. 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. 20.12.2022 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.
16. 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 his entire amount of ₹13,55,892.50/- 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 ₹34,06,064.50/- as per detail given in the table below:

S.No.	Principal Amount paid by complainant	Date of payment	Interest Accrued till 20.12.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹1,11,792/-	08.03.2008	₹1,75,347/-	₹2,87,139/-
2.	₹2,23,585.50/-	22.04.2008	₹3,47,774/-	₹5,71,359.50/-
3.	₹2,28,868/-	13.06.2008	₹3,52,534/-	₹5,81,402/-
4.	₹2,28,868/-	05.09.2008	₹3,46,951/-	₹5,75,819/-
5.	₹2,81,446/-	19.12.2008	₹4,18,075/-	₹6,99,521/-
6.	₹2,81,333/-	01.04.2009	₹4,09,491/-	₹6,90,824/-
Total	₹13,55,892.50/-		₹20,50,172/-	₹34,06,064.50/-

I. DIRECTIONS OF THE AUTHORITY

17. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹34,06,064.50/- to the complainant.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

18. 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]