



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1370 of 2022
Date of filing:	15.06.2022
Date of first hearing:	09.08.2022
Date of decision:	20.12.2022

Ashok Kumar Sangwan

S/o Sawroop Singh

R/o flat no -1201, Ashoka Enclave, plot-8a, sector-11,

Dwarka, New Delhi

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd. through its Managing Director

Office: Parsvnath Metro Tower, Near Shahdara Metro Station,

Shahdara, Delhi- 110032 and Corporate Office at 6th Floor,

Arunachal Building, 19, Barakhamba Road,

New Delhi- 110001

....RESPONDENT(S)

CORAM:

**Dr. Geeta Rathee Singh
Nadim Akhtar**

Member

Member

Hearing:

3rd

Geeta Rathee

Present: - Mr. Ashok Kumar Sangwan, the complainant through video conference

Ms. Isha Janjua, proxy counsel for the respondent

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaints dated 15.06.2022 have been filed by complainants 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.
2. Brief facts of the case as per pleading and annexures are as under:

S.N.	Particulars	Details
1.	Name of the project	Parsvnath Palliwal City, Panipat
2.	Nature of the Project	Residential site/building
3.	RERA Registered/not registered	Registered
5.	Unit no.	C-198 S
6.	Unit area admeasuring	1220 sq. ft

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7.	Allotment letter	28.07.2010
8.	Date of Flat-buyers Agreement	25.08.2010
	Possession Clause	<p>Clause 9(a) of Flat buyers Agreement</p> <p>"9 (a) The Developer shall endeavor to complete</p> <p>construction of the Flat within twenty four (24) months from the date of commencement of construction on the individual plot on which the Flat is located with a grace period of six (6) months, after receipt of all requisite approvals as may be required for commencing and carrying on construction, subject to force majeure, restraints or restrictions from any courts/authorities, circumstances beyond the control of the Developer and subject to timely payments by the Buyers. For the purpose of this clause/agreement the date of submission of application with the competent authority for obtaining completion/part completion/occupancy certificate in respect of the Scheme shall be reckoned as the date of completion of the Flat for the purpose required by any competent authority, which alterations may result into change of location and/or area of the Flat. In the eventuality of change in location or area of the Flat, the allocation of changed location/area of the flat shall be made by the Developer and the final area shall be confirmed on completion of construction. The Buyer shall have no claim against the Developer except that basic price shall be payable on the revised area of the Flat on its</p> <p>re-location."</p>

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8.	Due date of possession	Twenty four months from the date of construction i.e 10.03.2012
9.	Total Sale Consideration	14,12,760/-
10.	Amount paid by the complainants	4,75,546/-
12.	Delay in handing over of possession from the date of construction	6 months, 3 days

FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

3. That the complainant had booked a residential unit/ flat no.C-198 S, on second floor in the project namely Parsvnath Royale Floors at Parsvnath Palliwal City, Panipat and paid ₹1,42,008/- as booking amount by cheque on 19.06.2010. On 28.07.2010, respondent has issued allotment letter in respect of Flat no.198 S of the said project. Copy of allotment letter is annexed as Annexure C-2.
4. That Flat Buyer Agreement was executed on 25.08.2010 between the respondent and complainant. Copy of FBA is annexed as Annexure C-3. The complainant has opted for construction linked payment plan and the

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total sale consideration was agreed to be ₹14,12,760/-. The complainant has paid ₹4,75,546/- till 2012. Copies of receipts are annexed as Annexure C-4 colly.

5. That as per Clause 9 (a) possession of the unit was to be delivered within a period of 24 months from the date of commencement of construction of the flat on the individual plot on which the flat is located with a grace period of six months. The construction of the said unit was commenced on 10.03.2012 according to the demand notice sent by respondent on 22.02.2012. Copy of the demand notice is annexed as Annexure-5. Accordingly, the due date of offering of possession was 09.09.2014.
6. In April 2014, complainants visited the site of the project to see the status of the project and was shocked to see that the project was way behind than the agreed development schedule. On 02.06.2014, complainants again visited the site of the project but still there was no progress in the construction and development of the project. Thereafter, complainant sent an email on same date to the respondent. Copy of email dated 02.06.2014 is annexed as Annexure-6. But respondent never replied back to the complainant. Thereafter, Complainant had approached the respondent for refund of the amount paid but respondent never paid any heed towards the same.
7. That with passage of time, the respondent started giving deaf ears to the applicant and did not respond to the requests of the complainant.

8. That project was not completed even after the lapse of more than 8 years of the due date of possession and complainants were consistently demanding refund along with interest but no response was given till date.
9. That inordinate delay in handing over of possession of the unit clearly amounts to deficiency of service on account of the respondent company and the complainant has rightly claimed to withdraw from the project and refund of amount along with interest and compensations as per Section 18 of RERA Act.

RELIEF SOUGHT

10. The complainant in his complaint has sought relief of refund of the amount paid along with interest.

REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.10.2022 pleading therein:

11. That the present Complaint is liable to be dismissed as the Floor Buyer Agreement was executed in the year 2010, before the Real Estate (Regulation & Development Act), 2016 came into force. Therefore, the provisions of RERA Act are inapplicable to the present agreement. The RERA Act cannot be said to have retrospective application and impose limits, retrospective Company.
13. 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 do 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.

14. That, on 19.06.2010, the complainant had applied for Flat no. C-1988, area ad measuring 1220 Sq. ft. in the Project namely "Parsvnath Elite Floors" in Parsvnath Paliwal City, Panipat.
15. That 25.08.2010, Flat Buyer Agreement (FBA) was executed between the complainant and the respondent company. The basic selling price (BSP) of the unit was fixed at Rs. Rs. 14,12,760/- after availing a special discount of 51,240/- i.e., 3.50% of the basic selling price and the complainant had made a payment of ₹4,75,546/- to the respondent company. A copy of customer ledger is annexed as Annexure R-2.
16. That on 22.08.2022, complainant was duly informed about the change of allotment no. from Unit No. C-1945 to C-1045 vide letter C-1049/589. A copy of letter dated 22.08. 2022 is annexed herewith as Annexure R-3

17. That the developer has planned to develop the project land into a residential colony named as "Paranath Paliwal City and laid out plots of various sizes in the Colony as per layout approved by DTCP, Haryana.
18. The on 31.03.2007. land owners had obtained license bearing No 163 to 171 of 2007 from Director, Town & Country Planning, Chandigarh (DTCP) for setting up of residential plotted colony over an area measuring 162.48 acres, Sector 38-39, Village Kahri and Fandbur, District Panipat.
19. That on 04.04.2019, application for renewal of license no. 163 to 171 of 2007 was submitted before the Director, Town & Country Planning, Chandigarh (DTCP). On 09.07.2019, application for renewal of license no. 163 to 171 of 2007 was renewed by Director, Town & Country Planning, Chandigarh (DTCP) up to 30.03.2021.
20. That all the EDC/IDC & other statutory dues have already been fully paid to the competent authority and all the internal development & Basic Infrastructure has already been developed at the Project Site. The respondent company/developer has planned a scheme to construct and market residential units/flats named as "Parsvnath Royale Foors" on plots in the said colony as per building plans approved by the competent authority.
21. That there is no intentional delay the part of the respondent company and the project has been delayed beyond the control of the Respondent.

22. That in view of aforementioned facts, it is submitted that the captioned complaint is frivolous, vague and vexatious in nature. The captioned Complaint has been made to injure the interest and reputation of the Respondent and therefore, the instant Complaint is liable to be dismissed in limine.

JURISDICTION OF THE AUTHORITY

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

I. 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, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

II. 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:

(4) The promoter shall— (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:

34. Functions of Authority.—The functions of the Authority shall include—(f) 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 the adjudicating officer if pursued by the complainants at a later stage.

ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

23. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainants are seeking refund of the amount deposited by them along with interest.

ISSUES FOR ADJUDICATION

24. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

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OBSERVATIONS AND DECISION OF THE AUTHORITY

25. In light of the background of the matter, Authority observes as follows:

(i) Respondents have admitted basic facts of the matter that a flat-buyer agreement was executed in the year 2010. Against total consideration of Rs. 14,12,760, an amount of R. 4,75,546/- has already been paid which has been duly acknowledged by way of receipts as well as in their written statements.

(ii) That as per the terms of the flat-buyer agreement dated 25.08.2010 possession of the apartment was supposed to be delivered within 24+6 months from the date of construction i.e., 10.03.2012 which means possession should have been delivered by 09.09.2014. But a proper legal offer of possession has still not been made even after lapse of 8 years. Such an inordinate delay tantamount to complete breach of an agreement. Such huge delay defeats the very purpose of booking a flat and no reasonable cause for such huge delay has been presented by the respondent.

(iii) The allottee cannot be expected to wait endlessly for taking possession of the allotted unit for which he has paid a considerable amount towards the sale consideration. It had been as observed by the Hon'ble Supreme Court of India in the cases of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors**, and reiterated in

case of **M/s Sana Realtors Private Limited & other Vs Union of India**

& others (Supra) which is reproduced as below:-

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(0) 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 on 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”.

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. 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 (I) 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."

27. 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.
28. 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%.


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29. 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 by him till the actual realization of the amount

As such, the complainant is entitled to refund of the entire amount paid by him 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 of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

30. Authority has got calculated the interest payable to the complainants and accordingly total amount payable to the complainants including interest calculated at the rate 10.60% till the date of this order and said amount

works out to ₹10,67,151/- is depicted in table below:

1.	Date of payment	Principal Amount	Interest accrued till date i.e., 20.12.2022	Total Amount payable to complainant
1.	2010-06-19	₹142008	₹188387/-	₹3,30,395/-
2.	2010-10-11	₹41276	₹53390/-	₹94,666/-
3.	2010-10-11	₹3638	₹4706/-	₹8,344/-
4.	2010-10-11	₹50,000	₹64,675/-	₹1,14,675/-
5.	2010-10-11	₹50,000	₹64,675/-	₹1,14,675/-
6.	2012-03-09	₹1,40,544	₹1,60,772/-	₹3,01,316/-
7.	2012-03-09	₹39,120	₹44,750/-	₹83,870/-
8.	2012-03-09	₹8,960	₹10,250/-	₹19,210/-
	Total	₹4,75,546/-	₹5,91,605/-	₹10,67,151/-

DIRECTIONS OF THE AUTHORITY

31. 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 ₹10,67,151/- to the complainant.

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(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.

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

32. Complaint is, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.



DR. GEETA RATHEE SINGH
[MEMBER]



NADIM AKHTAR
[MEMBER]