



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1480 of 2022
Date of filing:	27.06.2022
Date of first hearing:	09.08.2022
Date of decision:	20.12.2022

Kanta Grover aged 82 years,
D/o Sh. Bishan Das Sachdeva,
R/o House no. B-27B, Vijay Nagar Single Story,
Dr. Mukherjee Nagar,
North West Delhi, 110009.

....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**

Geeta Rathee

Present: - Mr. Ramesh Malik, 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 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 unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Parsvnath City, Sonapat
2.	Date of application by original applicant	08.09.2004

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3.	Unit area	400 sq. yards (Pg-3 complaint)
4.	Date of endorsement in favour of complainant	18.12.2006
5.	Date of allotment	Not made
6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹14,80,000/-
8.	Amount paid by complainant	₹7,40,000/-
9.	Due date of possession	Cannot be ascertained
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 08.09.2004, Mr. Parvinder Khatri (original applicant) booked a plot measuring 400 sq. yards in a township named 'Parsvnath City' under 'Present and Future Scheme' launched by respondent company at Sonipat, Haryana. Mr. Parvinder Khatri(original applicant) had paid an amount of ₹7,40,000/- to the respondent. Copies of payment receipts have been annexed as Annexure C-2 (colly). Thereafter, present complainant purchased the booking rights from Mr. Parvinder Khatri and endorsement in his favour was made on 18.12.2006. Copy of endorsement letter has been annexed as C-3 with the complaint.

4. That, on 28.02.2013 the respondent company wrote a letter to other allottees that they would not be charged any interest on delayed payment against the above mentioned unit till 28.02.2013 and further stated that possession of said plot is expected to be handed over by December, 2013. The complainant on numerous occasions approached the office of respondent-company requesting for actual physical possession of the plot in question but in vain. Complainant has already paid 50% of the total sale consideration but even after lapse of more than 18 years from the date of booking, respondent has failed to hand over the possession of the plot or even make allotment of the plot to the complainant.
5. Complainant has physically inspected the site and it has come to his knowledge that there is no scope of handing over possession of residential plot in question as on the project site the development of the area is very limited. It has also come to knowledge of complainant that requisite approvals from the authorities have also not been taken by respondent. It has been alleged by complainant that the construction of the project is still pending and development of the project is at halt and project is far from completion. No offer of possession has been made despite lapse of more than 18 years from date of booking. It has been stated that Authority in its subsequent decisions has directed respondent to hand over possession of the

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allotted plots to the similarly situated buyers in complaint no. 723 of 2019 titled Nishant Bansal versus M/s Parsvnath Developers Ltd, vide order dated 11.03.2020 and further in vide order dated 13.10.2021 passed in complaint case no. 865 of 2020 titled Deepak Gupta versus M/s Parsvnath Developers Ltd., Authority has directed respondent to pay upfront interest and has also been directed to pay monthly interest of the deposited amount. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainant in his complaint has sought following reliefs:
- (i) To direct the respondent company to offer actual physical possession of the plot in question in the project of respondents;
 - (ii) To direct the respondent company to obtain license from Haryana Town & Country Planning, Haryana of the project Parsvnath City, Sonipat, Haryana;
 - (iii) To Direct the respondent -company to pay interest on delayed possession for more than 18 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainants;
 - (iv) To direct the respondent to pay ₹10,00,000/- as part of damages to the complainants on account of mental agony, torture and harassment;

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- (v) To direct the respondents to pay upfront interest and also monthly interest as per the direction given by this Hon'ble Authority in Complaint No.865 of 2020 titled as Deepak Gupta Versus M/s Parsvnath Developers Ltd. and other connected bunch of complaints till the actual physical possession is offered to the complainants;
- (vi) Any other relief- remedy which is deemed fit by this Hon'ble Authority in the present facts and legal preposition of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 22.09.2022 pleading therein:

7. That, the present complaint is not maintainable before this Hon'ble Authority for the reason that the Complainant is not an allottee of the respondent company and the registration was mere an expression of interest towards the future project of the respondent.
8. 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.
9. That, there is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the Respondent, hence the present complaint is not maintainable.

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10. 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.
11. That, on 08.09.2004, Mr. Parvinder Khatri (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the Respondent and paid ₹2,25,000/- towards the registration.
12. That, neither location nor site of the project was confirmed therefore, the Original Applicant, while filling the Application Form gave undertaking that in case no allotment is made, and he shall accept the refund. The relevant clause of the Application Form is mentioned here under:-

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“(f) Though the Company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

A copy of the Application Form dated 08.09.2004 signed by the Original Applicant is annexed with reply as Annexure R-1

13. That, perusal of CLAUSE F of the Application Form would show that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in his favour and he has further given the undertaking that in case no allotment is possible in future, he would accept refund with simple interest at the rate of 10% per annum.
14. That, on 18.12.2006, original applicant transferred his interest, rights and liabilities in favour of present complainant. A copy of endorsement letter dated 18.12.2006 is annexed as Annexure R-2.
15. That, on 16.11.2006, the complainant signed Affidavit-Cum-Undertaking and Indemnity, the said Affidavit-Cum-Undertaking and Indemnity clearly stipulates that in case the complainant is not allotted any plot in new project of the respondent, he shall accept refund of the deposited amount with 9% simple interest per annum. For ease of appreciation CLAUSE 7 of the undertaking is reproduced hereunder:

“That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest @ 9 % per annum from the date of acceptance of our nomination by the Company.”

A copy of Affidavit-Cum-Undertaking and Indemnity is attached as Annexure R-3.

16. That, it is pertinent to mention that the complainant had paid ₹7,40,000/- till date to the respondent company. A copy of the latest ledger is annexed as Annexure R-4.
17. That, it is a matter of record that the complainant had not paid any consideration after the endorsement in his favour and neither the respondent has made any demand after 2006. At the time of endorsement in favour of the complainant, the respondent made it very clear that there was no allotment made in favour of the original applicant which was never objected by the complainant.
18. That, it is pertinent to state that in absence of any agreement to sale, the complainant is bound by the terms & conditions of the application form and Affidavit-Cum-Undertaking and Indemnity duly signed by the complainant.
19. That, the complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected themselves in filing

the above captioned complaint before this Hon'ble H-RERA, Panchkula as the relief (s) claimed by the complainant does not even fall within the realm of jurisdiction of this Hon'ble Authority, Panchkula as there is neither any allotment nor any agreement to sale which can be adjudicated by this Hon'ble Authority.

20. That, in view of the submissions made hereinabove it is submitted that no cause of action has arisen in favour of the complainant to file the present complaint. Further, the complaint is barred by limitation and deserves and outright dismissal on this ground alone.
21. That, the complainant is not an allottee of the respondent company as per Section 2 (d) of the RERA Act as the registration was mere an expression of interest towards the upcoming project of the respondent & purchased the same from open or secondary market. No plot buyer agreement was ever executed with the complainant or with his predecessor-in-interest.
22. That, both the complainant and his predecessor-in-interest were aware about the status of the project while proceeding with their registration and no objections were raised by them. Therefore, the complainant cannot be allowed to raise a belated claim against the respondent at this stage.
23. Respondent has admitted that payment of ₹7,40,000/- made by the complainant and is willing and ready to refund the amount paid by

complainant as per the terms and conditions of application form and Affidavit-Cum-Undertaking and Indemnity executed by complainant.

24. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

25. During oral arguments both parties reiterated their arguments as were submitted in writing. Mr. Ramesh Malik, learned counsel for the complainant has stated in the Court today that the decision already taken by the Authority in bunch of cases with lead case **complaint case no. 723 of 2019 titled Deepak Gupta versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. Hence, this complaint be disposed of in the same manner.

F. JURISDICTION OF THE AUTHORITY

27. 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 /92/2017-1TCP 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 Sonapat 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

28. Whether the complainant is entitled to relief of possession of plot booked by him along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

H. FINDINGS ON THE OBJECTIONS RAISED BY RESPONDENT

H.1 Objection regarding maintainability of complaint

29. The respondent has taken a stand that present complaint is not maintainable for the reason that complainant is not an allottee of the respondent company and registration was mere an expression of interest towards future project of respondent. Before adjudicating upon said issue, Authority has gone through the Preamble of RERA Act, 2016 and definition of allottee provided in Section 2(d) of the Act. Said provisions are reproduced below for reference:

“Preamble: An Act to establish the Real Estate Regulatory Authority Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected connected therewith or incidental thereto.”

“Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or

leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. The Preamble provides for the protection of interests of the ‘consumers’ of the real estate sector. Upon careful perusal of all the terms and conditions of Application Form annexed as Annexure R-1, it is revealed that complainant had paid a sum of ₹2,25,000/- for purchasing a plot measuring 400 sq. yards in next project of respondent and it was agreed between the parties that respondent shall allot a residential plot to complainant and in case he fails to do so for any reason whatsoever, advance money paid by complainant shall be refunded to him with 10% interest per annum. Meaning thereby he is a consumer of respondent.

30. Furthermore, as per the provisions of the Act any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. In the present case, complainant has paid a certain amount to respondent and same has been admitted by respondent in its reply. Mere fact that allotment of a particular unit was not made to complainant does not

mean that complainant is not an allottee of the respondent. Once respondent has accepted the application form and certain amount from complainant for purchase of a unit in his project and has agreed to sell the plot as per price mentioned in application form, it is his duty to allot him a unit within prescribed time. Failure on his part to do so will not affect the rights of complainant as an allottee. Even an application form which specifies the details of unit booked by complainant will be treated as agreement for selling the property. So, as per documents available on record, clearly shows that complainant has booked a plot in respondent's project and respondent had agreed for 'sale of a plot'. Accordingly, complainant is well within the definition of allottee. Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.

I. FINDINGS OF AUTHORITY ON RELIEF CLAIMED BY COMPLAINANT

31. In view of above and after going through the record, Authority observes that complainant has booked plot in present and future project of respondent, paid fifty percent of total sale price, no allotment or builder buyer agreement has been executed between the parties and complainant is seeking possession of the plot booked by him. It is observed that the factual matrix of present case is similar to

bunch of cases with lead case Complaint no. 723 of 2019 titled as Nishant Bansal versus Parsvnath Developers Ltd. Accordingly, Authority is absolutely satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 723 of 2019. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 723 of 2019 titled as Nishant Bansal versus M/s parsvnath Developers Ltd.**

J. DIRECTIONS OF THE AUTHORITY

32. Accordingly, complaint is allowed and the respondent is directed to allot and deliver the possession of booked plot to the complainant in the project 'Parsvnath City, Sonipat' on payment of balance sale consideration recoverable from him. Respondent promoter shall comply with these directions within 90 days from the date of this order. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it from open market at his own cost. Respondent promoter however will be entitled to recover from the complainant the balance amount payable by him as per the rate agreed by the parties at the time of booking of plot.



33. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



.....
Dr. GEETA RATHEE SINGH
[MEMBER]

