



# HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

## 1. COMPLAINT NO. 166 OF 2022

Parveen Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

## 2. COMPLAINT NO. 167 OF 2022

Amita Jain & Santosh Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

Since in order dated 15.12.2022, in Para 1, words "Form CRA" have been inadvertently written, the said words be read as "format prescribed".

.....  
**DR. GEETA RATHEE SINGH**  
[MEMBER]

.....  
**NADIM AKHTAR**  
[MEMBER]



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

### 1. COMPLAINT NO. 166 OF 2022

Parveen Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

### 2. COMPLAINT NO. 167 OF 2022

Amita Jain & Santosh Jain

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Date of Hearing:** 15.12.2022

**Hearing:** 4<sup>th</sup>

**Present: -**

Mr. Rahul Bindal, learned counsel for the complainants through video conference

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

*Geeta Rathee*

**ORDER (Dr. GEETA RATHEE SINGH -MEMBER)**

1. Present complaints dated 15.02.2022 have been filed by complainants in Form CRA 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.

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

2. Facts of captioned complaints are similar and they pertain to same project of the respondent promoter M/s Parsvnath Developers Ltd. Both the captioned complaints, therefore, have been taken up together for disposal. Facts of complaint no. 166 of 2022 titled as Parveen Jain versus M/s Parsvnath Developers Ltd. are being taken into consideration by treating it as lead case.

3. The particulars of the unit booked by complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects

2  


2.	Date of application by original applicant	11.06.2004
3.	Date of endorsement in favour of complainant	17.07.2010
4.	Date of allotment	Not made
5.	Date of builder buyer agreement	Not executed
6.	Total sale consideration	Not mentioned
7.	Amount paid by complainant	₹5,62,500/-
8.	Due date of possession	Not mentioned
9.	Offer of possession	Not made

4. That, the respondent is the promoter under section 2 (zk) of the Act of 2016. Based on advertisements by the representative of the promoter M/s Parsvnath Developers, Mr. Naresh Kumar approached the respondent and consequently, on 11.06.2004 they agreed towards advance registration of residential plot in its new projects and agreed to invest in future projects of the respondent.

5. That, under the terms of agreement/registration, said Shri Naresh Kumar invested an amount of ₹1,57,500/- (Rupees One Lakh Fifty-Seven Thousand Five Hundred) only, which was duly received and acknowledged as advance against present and future projects of the respondent. A copy/proof of the receipt is annexed at Annexure 1.

*S. Rathee*

6. That, it appears that the respondent was unable to develop any project against the said registration or allot any residential plot to said person. Thereafter the said receipt was transferred in the name of Shri Rajesh Gupta and was endorsed in his name on 10.02.2006 on making further payment of ₹3,67,500/- in favour of the respondent. That the respondent acknowledged the said endorsement and issued receipts in said regard. A copy/proof of the receipt is annexed at Annexure 2.

7. That, the complainant used to visit the office of M/s Parsvnath Developers Ltd, on regular basis to enquire about the status of allotment of plots. That in June 2010 the complainant was allured to believe that the respondent was at final stages of allotment and allotment would be made soon.

8. That, officials of the respondent represented to the complainant that there was no current booking available but they could arrange for such purchase from pre-existing customers of the respondent. That respondent's officials allured the complainant to purchase the registration of the above said person Mr. Rajesh Gupta who had already invested an amount of ₹5,25,000/- with the respondent. That, it was also agreed with the complainant that the value of plot shall be at ₹3,650/- per sq. yards and balance shall be payable at the time of issuance of possession letter and actual handing over of possession.

4 Katase

9. That, the complainant thereafter purchased the said allotment from Mr. Rajesh Gupta. Mr. Rajesh Gupta accordingly made an application in the form prescribed with you and was approved with endorsement on the receipts in favour of the complainant on 22.07.2010. A copy/proof is annexed at Annexure 3.

10. That, the respondent issued a letter dated 17.07.2010 thereby acknowledging endorsement of the receipts and registration against 'P & F Projects' being substituted in favour of the complainant to the tune of ₹5,25,000/-. A copy/proof is annexed at Annexure 4.

11. That, as per the terms and conditions the complainant kept on requesting upon respondent's officials to allot him a residential plot. Respondent's officials initially stated that due to Court orders they cannot make such allotment or sometimes stated that the ongoing projects do not have plot available and only flats are being constructed. The complainant was made to understand that his money was safe and soon allotment would be made. The complainant was assured that the allotment would be made at the agreed rate of ₹3,650/- per square yard and no escalation charges would be imposed. The complainant was further impressed upon that his money is safe and is growing as prices of land are increasing day by day and their price is fixed. Further even the respondent has agreed to pay interest at the rate of 18% per annum in case of delay.

  
Kethree

12. That, with passage of time, the respondent started giving deaf ears to the complainant and did not make any allotment of any nature.

13. That, the complainant had lost faith and confidence in the respondent's promise and there is a clear fraud committed by respondent and therefore, called upon the respondent to immediately refund the amount. As per respondent's accounts, the complainant has deposited a sum of ₹5,25,000/- which is against due receipts and acknowledgement.

14. That, the said demands for return of the amount deposited by the complainant were not paid any heed upon by respondent and respondent had refused to return the amount deposited by the complainant. There is no reason for retaining the said amount of the complainant for last 10 years with no intention of delivering of the plot.

15. That, the complainant calls upon respondent to return the entire amount deposited by the complainant being ₹5,25,000/- (Rupees Five Lakhs Twenty-Five Thousand) along with interest at the agreed rate of 18% per annum from 17.01.2006. Hence, present complaint has been filed.

**RELIEF SOUGHT**

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

- (i) That petitioner's original seniority for allotment of the developed flat/plot/building/apartment should be restored and accordingly applicant may be allotted the apartment/property.

6 

- (ii) Deposit of ₹5,25,000/- should be refunded along with interest of @18% per annum from 17.01.2006.
- (iii) Any other relief given, in the interest of justice.

**REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 08.04.2022 pleading therein:

17. 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.

18. 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.

19. That, there is no 'Agreement to Sell' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.

7 



20. 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.

21. 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.

22. That, on 11.06.2004, Mr. Naresh Kumar (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the Respondent and paid ₹1,57,500/- towards his registration.

23. 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:-

  
Kathee

“(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 11.06.2004 signed by the Original Applicant is annexed with reply as Annexure R-1

24. 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.

25. That, on 17.07.2010, the subsequent purchaser transferred /endorsed /nomination his interest, rights & liabilities in favour of Mr. Parveen Jain (The Complainant) after submitting the necessary/relevant documents in the office of respondent company. A copy of endorsement/nomination letter dated 17.07.2010 is attached as Annexure R2.

26. That, on 17.07.2010, 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:

  
Parveen Jain

""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.

27. That, it is pertinent to mention that the complainant had paid ₹5,62,500/- (Rupees Five Lakhs Sixty Two Thousand & Five Hundred Only) till date to the respondent company. A copy of the latest ledger is annexed as Annexure R-4.

28. 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 2010. 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. सत्यमेव जयते

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. Respondent has admitted that payment of ₹5,62,500/- 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.

  
Katwee

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

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

36. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainants are willing to accept refund of the amount deposited by them along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainants, but is ready to refund the amount.

**ISSUES FOR ADJUDICATION**

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

**OBSERVATIONS AND DECISION OF THE AUTHORITY**

38. 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) That in these 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 amount deposited; respondent has expressed its inability to offer plot to the complainants and is agreeable to refund the amount deposited. For these reasons, a case is clearly made out to allow relief of refund as sought by complainants. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainants deserve to be granted.

(iii) Hence, Authority observes that respondent should 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 10.60% (8.60% + 2.00%) from the date amounts were paid till today.

39. 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% is depicted in table below:

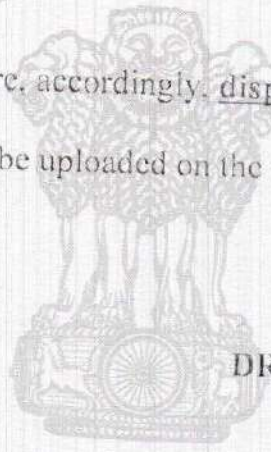


S.No.	Complaint no.	Amounts paid by complainants	Interest Accrued till 15.12.2022	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	166 of 2022	₹5,62,500/-	₹10,15,311/-	₹15,77,811/-
2.	167 of 2022	₹7,25,000/-	₹13,29,849/-	₹20,54,849/-

### DIRECTIONS OF THE AUTHORITY

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

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



सत्यमेव जयते

DR. GEETA RATHEE SINGH  
[MEMBER]

NADIM AKHTAR  
[MEMBER]