



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	82 of 2022
Date of filing:	20.01.2022
Date of first hearing:	10.03.2022
Date of decision:	17.01.2023

1. Sanjay Verma,

R/o 9.44, 2nd floor, Opp. Punjab and Sind Bank, Moti Nagar,

New Delhi, 110015.

2. Mrs. Renu Verma, W/o Sanjay Verma,

R/o 9.44, 2nd floor, Opp. Punjab and Sind Bank, Moti Nagar,

New Delhi, 110015.

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.,

Parsvnath Metro Towers, Shahdara Metro Station,

Shahdara,

Delhi, 110032.

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Geeta Rathee

Present: - Mr. Nitin Sharma, counsel for the complainant through video conference
 Ms. Rupali S. Verma, counsel for the respondent through video conference

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 20.01.2022 has 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.

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)

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3.	DTCP License no.	1205-1206 of 2006
4.	Date of application by complainants	03.03.2008
5.	Unit no.	T4-204, 2 nd floor
6.	Unit area	1310 sq.ft.
7.	Date of builder buyer agreement	18.03.2008
8.	Basic sale price	₹29,94,970/-
9.	Amount paid by complainant	₹28,45,221.50/-
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of the complainant's case are that in the year 2008, complainants booked a flat bearing no. T2-204, admeasuring 1310 sq. ft. in a project named 'Parsvnath Preston, Sonapat' being developed by respondent by paying booking amount of ₹1,49,736/-. As per clause 10(a) of flat buyer agreement executed between the parties on 18.03.2008, respondent was under an obligation to hand over possession of the flat within a period of 36 months from the date of start of foundation of particular tower along with grace period of 6 months, but respondent failed to fulfil his promises. Copy of said flat buyer agreement has been annexed as Annexure P-3 with the complaint. The unit was booked as per EMI subvention scheme of the builder wherein down

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payment of ₹4,50,221.50/- was made by the complainants and a bank loan of ₹23,95,000/- was got disbursed from Axis Bank Ltd. to builder in April 2008. Thus, a total amount of ₹28,45,221.50/- was paid to the respondent till April 2008 out of the basic sale price of the unit amounting to ₹29,94,970/-. As per EMI agreement dated 17.03.2008, respondent was supposed to pay the EMI's for the bank loan till date of offer of possession of the flat was made to the complainants. However, respondent has blatantly flouted the terms of EMI agreement and has not been reimbursing the EMIs paid by the complainants.

4. That, complainants contacted the respondent on several occasions for handing over the peaceful possession of the unit without any delay but respondent has not offered the possession of the unit till date. Looking at the status of the project, complainants vide letters dated 13.12.2011, 09.11.2015 asked for cancellation of unit and requested the respondent to refund the amount as there was no development in project. Respondent vide letter dated 16.06.2012, agreed to refund the earnest money (including repayment of bank loan) in six instalments with 12% interest. Complainants even sent two legal notices in March 2013 and December 2021 but no action was taken by respondent.
5. That, on 15.06.2021, complainants got 'No Objection Certificate' (NOC) from Axis Bank and bank returned all original documents to

complainants. On 29.07.2021, complainants wrote to respondent that bank loan has been closed and bank has given NOC and requested to release all documents connected to property in question. There has been lapse of more than 14 years from the date of booking, so the complainant has lost faith in respondent and has no hope of getting the flat. Respondent has utilized the money of the complainant for his own benefits and has violated the terms of agreement. Therefore, complainants wish to withdraw from the project and hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainants in their complaint have sought following reliefs:
- (i) Refund of all the investment with 24 percent interest rate and with damages and in addition mental harassment, damages, litigation cost.
 - (ii) Declare that the terms of the FBA are one sided, prejudicial to the interest of the purchasers, arbitrary and biased and against the provisions of the Real Estate (Regulation and Development) Act, 2016 and the Haryana State Real Estate (Regulation and Development) Rules, 2017.
 - (iii) Direct the respondent to pay delay penalty in terms of Section 18 of the Act from the date of completion of thirty six months from the date of first receipt of money from the allottees.

(iv) Declare that the amount collected towards increase in super area are illegal as there is no increase in the area from the one approved by the State Authorities and there is no approved revision in building plans thereafter from the competent authorities.

(v) Direct the respondent to pay compensation to the tune of ₹6,00,000/- on account of mental agony, litigation cost, damages and harassment.

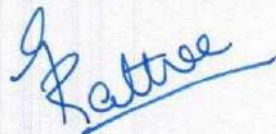
(vi) Any other relief which the applicant is entitled for under the Real Estate (Regulation and Development) Act, 2016 and Haryana State Real Estate (Regulation & Development) Rules, 2017.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

7. Respondent has filed his detailed reply on 16.05.2022 admitting the fact of booking of the apartment, the agreed sales consideration, the area and location of the apartment as well as payment of ₹28,45,221.50/- made by the complainant.
8. 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 letter dated 15.07.2021. It has been contended that EDC, IDC, conversion charges etc have been paid in full to the competent authority. 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 that possession may be offered to the respective buyers.

9. 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.
10. 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**

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

F. JURISDICTION OF THE AUTHORITY

12. 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/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 of 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:

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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.

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

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

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

14. 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. The project in question is a registered project and not unregistered as claimed by respondent.

(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

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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.”

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 complainants. Though the complainant has sought that interest be allowed @24%, 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 (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."

15. 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.
16. 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. 17.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.
17. The 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 complainants interest from the date amounts were paid till the actual realization of the amounts. Hence, Authority directs respondent to refund to the complainants their entire amount of ₹28,45,221.50/- 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 ₹72,93,852.50/- as per detail given in the table below:

S.No.	Principal Amount paid by complainants	Date of payment	Interest Accrued till 17.01.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹1,49,736/-	03.03.2008	₹2,36,297/-	₹3,86,033/-
2.	₹3,00,485.50/-	31.03.2008	₹4,71,751/-	₹7,72,236.50/-

3.	₹23,95,000/-	28.04.2008	₹37,40,583/-	₹61,35,583/-
Total	₹28,45,221.50/-		₹44,48,631/-	₹72,93,852.50/-

18. The complainants are seeking compensation on account of mental agony, harassment caused for delay in possession, damages and litigation costs. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation and litigation expenses.

K. DIRECTIONS OF THE AUTHORITY

19. 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:

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- (i) Respondent is directed to refund the entire amount of ₹72,93,852.50/- to the complainants.
- (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.
20. **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]