



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	365 of 2020
Date of filing:	27.02.2020
Date of first hearing:	17.06.2020
Date of decision:	28.02.2023

Anuradha Amar

w/o Harish Kumar

R/o A-31, Guru Ram Das Nagar

Lakmi Nagar, New Delhi-110092

...COMPLAINANT(S)

VERSUS

1. 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

2. General Manager, Project Office, Parsvnath Developers Limited, Flat no.G-

01, Tower 1, Parsvnath Royale, Sector 20, Panchkula.

....RESPONDENT (S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

G. Rathee

Present: - Mr. R.C Sharma, learned counsel for the complainant through video conference

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

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 Royale "Pocket B", Panchkula
2.	Nature of the Project	Residential unit/building
3.	RERA Registered/not registered	Registered

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3.	RERA Registered/not registered	Registered
5.	Flat no.	1001
6.	Tower No.	Tower:8
6.	Unit area admeasuring	1740 sq. ft
7.	Booking Date	04.04.2006
8.	Date of Flat-buyers Agreement	28.03.2011
	Possession Clause	<p>Clause 10(a) of Flat buyers Agreement</p> <p>10(a) Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block in which the Flat is located, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the Fire Service Dept., Civil Aviation Deptt., Traffic Deptt., Pollution Control Dept, as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the Developers and subject to timely payments by the Flat Buyers in the Scheme. No claim by way of damages/compensation shall lie against the Developers in case of delay in handing over possession on account of the said reasons. The date of submitting application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy</p>

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		<i>certificate of the Complex shall be treated as the date of completion of the Flat for the purpose of this clause/agreement. Date of booking whichever is later.</i>
8.	Due date of possession	Thirty six months from the commencement of construction with a grace period of six months i.e by 28.09.2014
9.	Total Sale Consideration	59,37,750/-
10.	Amount paid by the complainants	47,47,660/-

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

3. That the complainant had booked a residential unit/ flat no.1001 in tower 8 admeasuring 1740 sq. ft. in the project namely Parsynath Royale "Pocket B" at Sector 20, village Kundi, District Panchkula, Haryana and paid ₹5,00,000/- as booking amount on 04.04.2006.
4. That flat buyer agreement was executed on 28.03.2011 between the respondent and complainant. Copy of flat buyer agreement is annexed as Annexure C-2. As per flat buyer agreement, the basic sale price of the

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flat was fixed at ₹59,37,750/-. The complainant alleged that he has paid ₹47,47,660/- till date. However, a copy of receipt issued by the respondent amounting to ₹34,12,242/- has been annexed as Annexure C-5 in the complaint file.

5. That as per Clause 5 (b) of the agreement, the buyer is liable to pay interest @24% per annum if the payment is delayed. However, if the respondents/builder delays the completion of the work the compensation payable as per clause 10 would be @ ₹5 per sq. ft of the super area which is meagre compensation and respondent has acted in unfair manner.
6. That the respondent could not achieve the progress of work as promised, despite having made the booking and starting the project in the year 2006. A period of more than 13 years has already elapsed and till date the respondents have not been able to obtain occupation certification from the competent authority for even single flat in the entire project.
7. That initially respondent conveyed that possession of flat of complainant will be given by December 2012. On 20.06.2014, a meeting was held of management of respondents with flat owners and minutes of meeting were also drawn in which it was decided that two towers will be completed in March 2015 and possession will be delivered. However, the respondents kept on demanding money without undertaking the development of project as promised. A copy of the minutes of meeting dated 20.06.2014 is appended as Annexure C-3.

8. That complainant had initially got the home loan sanctioned from LICHL but the disbursement was stopped by LICHL because the work was not going on at the site. This fact was also conveyed by the complainant to respondents vide letter dated 29.12.2014 alongwith further letters regarding default of respondents including the one dated 15.11.2019. Copies of said letters dated 29.12.2014 and 15.11.2019 are appended as Annexure C-4 colly.
9. That afterwards, complainant has availed loan from the Dewan Housing Finance Limited (DHL) and a sum of Rs 34,12,242/-has been paid by the said company to the respondents on 12.06.2015 Copy of the receipt issued by the respondents are appended herewith as Annexure C-5.
10. That the complainants have been approaching the officials of respondents from time to time requesting early completion of work. Till date the respondents have not responded to the requests of the complainant who is desperately waiting for the completion of work and to shift in the flat purchased after spending savings of life time. The respondents, have not fulfilled the commitments made from time to time and has breached the clauses of the flat buyer agreement, and conditions of HRERA and the project as a whole is in bad shape.
11. That as per approved building plan of the project, 332 number of flats of different categories were to be constructed but actually the Responders No.1 and 2 have constructed 344 flats without obtaining approval of the

revised building plan. This violation is breach of the conditions of the approval letter of the originally approved building plan. Consequently, the concerned authorities have issued a letter bearing no. 17995 dated 12.9.2015 indicating the violations committed by the licensee.

12. That the respondents have committed glaring omissions even in the limited work under taken by them. They have omitted to provide single entry & exit gated community and security card system for entries into the complex as promised. CCTV in common area, provision of gas supply under the head **specifications** (Annexure-II) of the agreement has not been provided. The ducts meant for the services and the Energy meters have not been provided with doors and windows which is highly risky for the public. The Respondents have not constructed even one sq. ft. of metalled road within the project and they have not installed any tube well with machinery required to make it functional.
13. That respondent No 1 has been registered with Haryana Real Estate Regularly Authority, Panchkula vide registration no HRERA- PKL- (PKL-16-2018. The Respondent number 1 and 2 have misrepresented on many counts. Construction of 1200 sqm bituminous road at no 24 is totally fake figure because the Respondent No.1 has not constructed even 1 sqm metalled bitumen road. The quality of work is too poor which was never expected from the Respondent No. 1. The most of the conditions

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of the registration are also not being complied with by respondent No.1.

A copy of registration is appended herewith as Annexure C-6

14. That in view of the submissions made above and a perusal of the scheme brochure, agreement and various communications/documents related to the project it is established beyond any doubt that the respondent no. 1 and 2 have committed such violations which attract sections 12,14,18 and 19 of HRERA Act.
15. That in view of the defaults and omissions on the part of respondent no 1 and 2, complainant has filed this present complaint.

RELIEF SOUGHT

16. That the complainant has prayed for following relief:
- i) To direct the Respondent no. 1 to get full and final occupation certificate by completing the work as per the regulations and specifications provided in agreement alongwith all the amenities promised, and thereafter execute conveyance deed in favour of complainants within a period of 6 months.
- ii) Respondent no. 1 may kindly be directed to pay to the complainant interest @ 18% per annum on the total payment made by the complainants, with effect from 28.09.2014 (the stipulated date of completion) from the date of agreement as construction was already going on at the time of agreement, till the date of actual possession complete in all respects with all amenities provided under the agreement, occupation certificate and execution of conveyance deed.

iii) In the event of failure of the respondent no 1 and 2 to obtain occupation certificate on completing all the amenities and execute conveyance deed in favour of complainant, Respondent no. 1 may kindly directed to refund the amount of Rs.47,47,660/- deposited and pay to the complainant interest @ 18% per annum on the total paid amount by the complainant.

iv) To pay Rs 5,00,000/- as compensation on account of mental agony, harassment and suffering inconvenience etc.

v) To pay Rs.50,000/- as cost of litigation

REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 04.08.2020 pleading therein:

17. That the present complaint is not maintainable on the ground that the relief sought in the complaint cannot be adjudicated by this Hon'ble authority and the complainant has misdirected herself by filing the present complaint before this Hon'ble Authority
18. That the present complaint is barred by limitation. The Complainant cannot raise a belated claim against the respondent.
19. That the complainant booked this unit purely for investment purposes therefore, equitable grounds pleaded in the complaint are not even maintainable in law. The complainant cannot be allowed to profiteer at the cost of the Project.

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20. That the project is being developed in terms of statutory approvals granted by the competent authority.
21. That the complainant out of his own will and violation has opted for construction linked payment (CLP) Plan but did not adhere to the payment plan mentioned therein. A copy of the flat buyer agreement (PBA) dated 28.03.2011 and latest statement of account are annexed herewith as Annexure R1 and Annexure R-2 respectively
22. That it is matter of record that the complainant is a chronic defaulter and has delayed the payments which have led to the slow progress of the project, therefore, the complainant cannot be allowed to approbate and reprobate at the same time. The respondent company always raised demands for payment/instalments as per the plan opted by the Complainant.
23. The respondent is not liable to pay any interest on the refund being claimed by the complainant as per the clause 5(a) of the flat Buyers Agreement which has been signed by the complainant.
24. That this Hon'ble Authority has no jurisdiction to get into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement signed by the Complainant offered to them. As the apartment buyer's agreement dated 28.03.20211 has been executed much prior to coming into force of RERA Act.

25. That all statutory dues in the form of EDC, IDC, conversion charges etc have been paid in full to the competent authority. The project is being developed as group housing project (OH) and 09 towers are being constructed, out of which 04 towers Le, T-1, T-2, T3 & T-4 are almost complete and already have offered for t out possession. Then, the remaining construction work has been going on in the left towers.
26. That it is pertinent to state that the said project has duly been registered with Hon'ble Authority after considering the viability of the project, therefore, since the project is already under the supervision of this Hon'ble Authority, therefore, one of the claims of the complainant for refund is not justified at this point of time.
27. That the complainant has made false and baseless allegations with a mischievous intention to retract from the agreed terms and conditions duly agreed in form of the Agreement entered into between the parties. In view of the same, it is submitted that no cause of action has arisen in favour of the Complainant to institute the present complaint.
28. That the respondent company has acted strictly as per the flat buyer's agreement. It is submitted that post 18.02.2015, the department came out with a policy for formal transfer of beneficiary interest/development and marketing rights and the same has been implemented with retrospective effect in this process, even the policy was under review till as late as 31/1/2017 and thus, the licence could not be renewed by the Department.

which in turn, affected registration of the project under RERA. Amidst this confusion, pace of development was primarily affected due to sale proceeds not being paid by the allottees timely. The issue has now been resolved and after completion of all formalities, the Competent Authority has granted in principal approval of transfer of beneficiary interest/development and marketing rights on 08.06.2018.

29. That the entire Complaint has been drafted based on incorrect interpretation of the Flat Buyer's Agreement and as such, no cause of action has arisen in favour of the complainant to invoke jurisdiction of this Hon'ble Authority.

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

30. During the course of hearing, Ms. Rupali Verma, learned counsel for the respondent stated that she has submitted the status and progress report of construction work of tower-8 through an e-mail in compliance with the previous orders dated 22.11.2022. She further stated that 95 % of the construction work of the tower -8 is complete and respondent promoter had already offered the fit-out possession to the complainant-allottee on 10.06.2022. She further stated that respondent no.1 had not been able to obtain the occupation certificate only because renewal of license of their project is pending before the Competent Authority. However, unit is complete and complainant can take fit-out possession of her unit.

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31. Learned counsel for the complainant on the other hand, argued that mere offer of fit outs possession without obtaining occupation certificate is not a valid offer of possession of the flat. Therefore, he prayed before the Authority that a fresh valid offer of possession be made after obtaining occupation certificate from the competent authority.

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. 1/92/2017-1TCP 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.

ISSUES FOR ADJUDICATION

32. Whether the complainant is entitled for the possession of the flat booked by him along with interest for delay in handing over the possession in terms of Section 18 of the RERA Act of 2016?

OBSERVATIONS AND DECISION OF THE AUTHORITY

33. In light of the background of the matter, Authority observes as follows:
i) That respondent has admitted the basic facts that the flat buyer agreement was executed in 28.03.2011. Against the basic sale price of the flat of ₹ 59,37,750/-, respondent admits the amount of ₹ 47,47,657/-

paid by the complainant which has been duly acknowledged by way statement of accounts in their written statements.

ii) That as per the terms of the flat-buyer agreement dated 28.03.2011 construction of the flat was likely to be completed within a period of 36 months of commencement of construction of the particular block in which the flat is located, with a grace period of 6 months. Thus, possession of the flat was supposed to be delivered within 42 months from the commencement of the construction which means deemed date of possession was 28.09. 2014. But respondent has neither offered a valid/legal offer of possession nor has obtained occupation certificate from the competent authority even after lapse of 9 years.

iii) During the course of hearing dated 04.05.2022, learned counsel for the respondent stated that respondent will receive the occupation certificate for the project within in next three months. In regard to which vide orders dated 13.07.2022, 29.09.2022, 22.11.2022, respondent was directed to submit the status report with respect to obtaining the occupation certificate alongwith the status and progress report of the construction work of tower-8 and by the next date of hearing. In compliance of the above directions, respondent submitted the stage of the construction work in tower 8 of the project via mail which is reproduced below:

	T-8	
1	RCC Structure	100%
2	Brick Work	90%
3	Electrical Wall Conduiting	100%
4	Internal Plumbing Work	55%
	Plumbing Work (Vertical Pipes in Shaft)	25%
5	Door & Window Frame	60%
6	Internal Plaster Work	100%
7	External Plaster	100%

iii) Inference can be drawn from the status report submitted by the respondent that the construction of the tower is at an advance stage, however infrastructural facilities are yet to develop in the tower.

iv) Further learned counsel for the respondent in her pleadings has averred that fit out possession was offered to the complainant on 10.06.2022. Such offer of possession, as has been rightly argued by complainant's counsel, was not valid. Occupation Certificate has yet not been issued by competent authority. The complainants do not, therefore, intend to take possession of the booked unit unless the concerned department grants Occupation Certificate which would imply that building is fit and safe for human habitation.

iv) However, the complainant despite all delay on the part of the respondent in completing the project, is not intending to withdraw from the project and is seeking the relief of the possession of the flat alongwith interest prescribed. Therefore, considering the facts of the case, Authority directs the respondent to issue fresh offer of possession

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of the flat to the complainant after receiving the occupation certificate from the competent authority.

Further for the delay caused in handing over of possession, complainant is entitled for upfront interest from the deemed date of possession till the actual handing over of possession after obtaining the Occupation Certificate. Complainants are also entitled to receive each month's interest on the principal amount from the date of order i.e., from 28.02.2023 onwards till the handing over of possession after obtaining occupation certificate in terms of Rule 15 of HRERA Rules, 2017.

Though the complainant has sought that interest be allowed @18% however, same cannot be allowed at such rate 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."

34. 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.
35. 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. 28.02.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.
36. 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 is directed to pay the upfront interest to the complainant from the deemed date of possession till handing over of possession after obtaining the Occupation Certificate.

The interest payable to complainant has calculated on the principal amount of 46,53,312/- at the rate 10.70% till the date of this order which works out to ₹39,45,404/- except the collected service tax i.e., ₹94,343/-

. The respondent is further liable to pay the each month's interest from the date of order i.e., from 28.02.2023 onwards till the handing over of possession after obtaining occupation certificate which works out to 38,195/-.

37. Further, the complainant is seeking compensation on account of mental harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 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 litigation expenses.

DIRECTIONS OF THE AUTHORITY

38. 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) Authority directs the respondent to handover the possession of the flat to the complainant after receiving the Occupation Certificate from the Competent Authority.

ii) Authority further directs the respondent to pay the upfront interest to the complainant which works out to ₹39,45,504/- and further pay monthly interest of 38,195/- till handing over of possession after obtaining the occupation certificate.

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

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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.

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



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NADIM AKHTAR
[MEMBER]



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Dr. GEETA RATHEE SINGH
[MEMBER]