

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 22.04.2022 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 complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath City, Sonapat
2.	Date of application by complainants	09.02.2005
3.	Unit no, and area	B-3209, B block, 402 sq. yards (Pg-6 complaint)
4.	Date of allotment	22.09.2009
5.	Date of builder buyer agreement	17.03.2012
6.	Basic sale price	₹21,10,500/-

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7.	Amount paid by complainants	₹27,28,575/-
8.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 09.02.2005, complainants booked a plot admeasuring 402 sq. yards @5,250 per sq. yards, in a township named "Parsvnath City" under 'Present and Future Scheme' launched by respondent company at Sonapat by paying booking amount of ₹5,25,000/-. Complainants have paid a sum of ₹27,28,575/- till the year 2011 against the basic sale price of ₹21,10,500/-. Copies of payment receipts have been annexed with the complaint. Vide letter dated 22.09.2009, respondent informed the complainants that they have been provisionally allotted plot no. B-3209 admeasuring 402 sq. yards in their proposed township 'Parsvnath City, Sonapat' near Tau Devi Lal Park, Sonapat. Plot buyer agreement was executed between the parties on 17.03.2012. Copy of plot buyer agreement has been annexed as Annexure P-9 with the complaint.
4. That, despite accepting payment from the complainants and completion of all documentation, the respondent failed to offer and hand over the possession of the plot to the complainants and execute the title deed. Complainants have approached the respondent several

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times but respondent failed to do the needful. Hence present complaint has been filed.

C. RELIEF SOUGHT

5. The complainants in their complaint have sought following reliefs:

- (i) Direction to the respondent to handover the possession of a plot of 402 sq. yards (336.12. sq. mtrs) in Parsvnath City, Sonipat, and execute its title deed in favour of complainants, at the earliest, preferably within a period of 1 month.
- (ii) Direction to the respondent to pay to the complainants interest on the amounts paid from the date of payment till the date of possession of plot as per the RERA Rule 15 with the prevailing applicable SBI highest marginal cost of lending rate plus two percent i.e. 11.35%.
- (iii) Levy a penalty of 5% of the estimated cost of the real estate project on respondent for breach of its obligation.
- (iv) Direction to the respondent to refund the illegally levied additional price (i.e ₹6,18,075/-) over and above the sale price of ₹21,10,500/-, along with interest from the date of payment till the date of refund @ 11.35%.

In the alternative but without prejudice to prayers above,

- (v) If the respondent is not able to allot a 402 sq. yards in Parsvnath City, Sonipat, as prayed for, then in the alternative, direction to

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the respondent to return the amounts paid with interest from the date of payment till the actual refund @SBI Highest Marginal Cost of Lending rate plus two percent i.e. 1135% and a compensation of ₹25,00,000/- for harassment and sufferings.

(vi) Any other relief as this Authority may deem fit and proper in the interest of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

6. Written reply has not been filed in the matter. However, learned counsel for the respondent has orally argued the matter.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

7. During oral arguments, learned counsel for the complainants reiterated the arguments as were submitted in writing. He argued that the decision already taken by the Authority in bunch of cases with lead case **complaint case no. 723 of 2019 titled Nishant Bansal versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. He further argued that complainants in present case are even at a better footing than Nishant Bansal's case as in present complaint specific unit no. has been allotted to complainant and builder buyer agreement has been executed between the parties. Therefore, he requested that this complaint be disposed of in the same manner.

8. On the other hand, learned counsel for the respondent argued that facts of the present complaint are not similar to Nishant Bansal's matter, rather they are similar to complaint case no. 865 of 2020 titled Deepak Gupta versus Parsvnath Developers Ltd. However, she argued that present case may not be disposed of in terms of Deepak Gupta as well for the reason that at the time of passing of final order in complaint case no. 865 of 2020, respondent was in the process of getting LoI for the project. But situation is not the same today. Respondent has not received LoI for the project and is not in a position to develop the project and offer the possession of plot booked by the complainants. She also stated that none of the allottees have been given possession by respondent in project in question. Further she stated that in a situation where respondent is unable to develop the project and offer possession to the allottees, the only relief admissible is refund with interest. Therefore, she requested that refund be allowed instead of awarding possession with delay interest.

F. ISSUES FOR ADJUDICATION

9. Whether the complainants are entitled to relief of possession of plot booked by them along with interest for delay in handing over the possession in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

10. Authority has heard the arguments of both parties and has perused the documents available on record. After going through the submissions made by both the parties, Authority observes as under:-

- (i) The complainants in the present case have booked a plot bearing no. B-3209 in the project of the respondent. Upon careful examination of builder buyer agreement executed between the parties on 17.03.2012, it has been revealed that terms and wordings of said builder buyer agreement are exactly the same as of builder buyer agreement executed between the parties on 08.10.2012 in complaint case no. "865 of 2020 titled as Deepak Gupta versus M/s Parsvnath Developers Ltd." Moreover, the complainant in complaint case no. 865 of 2020 was allotted plot bearing no. B- 3305, Block B, Parsvnath City, Sonapat and complainants in present case have been allotted plot bearing no. B3209, Block B, Parvsnath City, Sonapat. Meaning thereby, the booking of plots made by complainants in both the complaints was made in "B Block" of same project i.e. Parsvnath City, Sonapat. So, it is observed that the factual matrix of present case is similar to bunch of cases with lead case Complaint no. 865 of 2020 titled as "**Deepak Gupta versus Parsvnath Developers Ltd.**" Accordingly, Authority is

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satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 865 of 2020. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 865 of 2020 titled as Deepak Gupta versus Parsvnath Developers Ltd.**

- (ii) In complaint case no. 865 of 2020, it was revealed that respondent neither had license to develop the project nor even LoI was obtained by him for the same. In that eventuality, since complainants were not interested to withdraw from the project and wanted to continue with the project, respondent was directed to pay the complainant upfront interest on the amount paid by him from deemed date of possession along till date of the order and also future interest for every month of delay occurring thereafter till the handing over of possession of the plot. Further respondent was prohibited from alienating the land of the project in question for any purposes except for completion of the project.

In the present complaint also the complainant wishes to continue in the project and in his complaint had prayed for directions to the respondent to hand over the possession of the plot of 402 sq. yards in Parsvnath City along with interest on


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the amount paid from the date of payment till the date of possession of plot as per HRERA Rule 15. It is further observed that though the learned counsel for respondent has orally argued that the respondent has not received the LoI for the project and is not in a position to develop the same and offer possession of the booked plot to the complainant, however no document issued by competent authority has been placed on record or relied upon by the respondent to prove that it has surrendered/abandoned the project. Therefore, the complainant U/s 18(1) of the RERA Act is entitled to the relief of interest on account of delayed possession.

Accordingly, complainant in the present case is also entitled to upfront interest on the amount paid by him from deemed date of possession till today along with future interest for every month of delay occurring thereafter till the handing over of possession at the rate prescribed in Rule 15 of the HRERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to be 8.70% (8.70%+10.70%).

- (iii) It is pertinent to mention that time for delivery of possession has not been stipulated in the builder buyer agreement. This Authority has been consistently observing in earlier decided cases where no timeline has been prescribed in builder buyer

agreement that the deemed date of possession shall be reckoned as three years from the date on which builder buyer agreement was executed. Thus calculated, deemed date of possession in the present complaint will be **16.03.2015**.

- (iv) Authority has got delay interest calculated from its account branch in terms of the observations made by Hon'ble Haryana Real Estate Appellate Tribunal vide its order dated 10.01.2023 in appeal no. 619 of 2021 titled as Parminder Singh Sohal versus BPTP Ltd. The details of amounts paid by the complainants and delay interest calculated on said amounts are shown in the following table: -

Amount paid by complainants	Upfront delay interest calculated by Authority till 28.02.2023	Further monthly interest
₹27,28,575/-	₹23,25,262/-	₹23,997/-

- (v) Complainants are seeking a relief that a penalty of 5% of the estimated cost of the real estate project be levied on respondent for breach of its obligation. In this regard it is observed that this relief has nowhere been claimed by complainants in their main complaint nor pressed by them during arguments. Hence, complainants prayer to levy a penalty of 5% of the estimated

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cost of the real estate project is rejected, with a liberty to file separate complaint under relevant sections.

- (vi) Complainants have also prayed that respondent be directed to refund the illegally levied additional price (₹6,18,075/-) over and above the sale price of ₹21,10,500/- along with interest from the date of payment till the date of refund @11.35%. In this regard it is observed that complainants have not proved by placing on record any document that said amount of ₹6,18,075/- was illegally collected from them nor said relief was pressed by them during arguments. Hence, complainants prayer that respondent be directed to refund the illegally levied additional price (₹6,18,075/-) over and above the sale price of ₹21,10,500/- along with interest is rejected without prejudice to the rights of the complainant to file a separate complaint with respect to this relief.

H. DIRECTIONS OF THE AUTHORITY


11. 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 pay the complainant upfront amount of ₹23,25,262/-. Respondent's liability for paying

monthly interest of ₹23,997/- as shown in above table will commence w.e.f. 29.03.2023 and it shall be paid on monthly basis till valid offer of possession is made to 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.

12. **Disposed of.** File be consigned to 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]