

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 15.02.2022 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	02.03.2005
3.	Unit area	400 sq. yards (Pg-5 complaint)
4.	Date of endorsement in favour of complainant	26.03.2007
5.	Date of allotment	Not made

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6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹22,54,000/-
8.	Amount paid by complainant	₹11,27,558/-
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 in March 2005, Mrs. Bharti Verma (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 Sonapat, Haryana by paying booking amount of ₹5,63,000/-. Mrs. Bharti Verma (original applicant) thereafter made payment of ₹5,64,558/- to respondent. Meaning thereby a sum of ₹11,27,558/- was paid by Mrs. Bharti Verma (original applicant) by the year 2007 against basic sale price of ₹22,54,000/-. Copies of payment receipts have been annexed as Annexure P-1 to P-4. Thereafter, Mrs. Bharti Verma sold the booking rights in the plot to present complainant on 13.02.2007 and endorsement in his favour was made on 26.03.2007. Copy of endorsement letter has been annexed as P-6 with the complaint.
4. That respondent also provided a computer printout titled "Parsvnath City 'B' Block- Customer Ledger" dated 26.03.2007 which provided

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the details of booking such as A/C Code: A 0212, Property No.: 1237, size: 400 sq. yards, basic cost: ₹22,54,000/-, payment plan: down Payment Plan, amount paid by complainant and amount due.

5. That the complainant is staying in a flat, nearing 50 years of age, who desired to have a home for his family, built on a plot of land and planned to use the same in due course of time as their retirement home. After waiting for some time and pursuing with the respondent's Barakhamba Road office by visiting it on various occasions and tried to meet one Mr. Mukesh Mehndirata, an executive who was looking after this project.
6. That, during one of the visits to respondent's Barakhamba Road office, it was informed by the receptionist in attendance that the Parsvnath City Project at Sonipat is looked after by Mr. Yogesh Kharbanda (DGM Commercial) at respondent's office at Shahdara. On 18.05.2011 at around 4:45 PM, the complainant personally met Mr. Kharbanda who, while not only assured the plot shall be made available along with the interest at 10% for the delay in delivery of possession as per Clause (c) of the registration form, also commented that the project cannot be abandoned by the company after 6 years of launch. Mr. Kharbanda expected allotment to happen by Deewali 2012 and informed that the matter is being pursued with the management. He also informed that over 1000 allotments are to be made and they have

huge land available but licence is the issue, and, if 100 acre licence comes, the complainant shall be allotted and in case 150 acres licence comes, whole backlog shall be over.

7. That, in the meantime, many communications over phone were tried and emails were written to all email IDs as were available on the website of the respondent. All of these remained un-responded by the respondent except one on 26.07.2013 from Dr. Sunit Sachar, Sr. V.P. (Mktg., CRM & Advt.), wherein he wanted the complainant 'to meet so that the matter can be resolved'.
8. That, as a follow up to the email of Dr. Sachar, the complainant along with his wife met him on 12.08.2013 at around 3:40 PM onwards. During the course of the meeting, Dr. Sachar threw highlights about the Parsvnath Sonipat project and gave assurance of getting allocations within next 2-3 months. He also stated that they have 600 acres of land for which licence has not been issued in full. He stated that the licence of 55 acres is pending and may come before 2014 general elections. He suggested to contact and follow up with one Mr. Ashish Jain so that a priority can be afforded in allocation as there is no system of priority registering in place. However, the follow up with Ashish Jain could not fructify any result.
9. Complainant has submitted that countless communications thereafter could not bring out any result and the plot of land even after over 15

years of wait has not been delivered by the respondent for which the complainant trusted his hard-earned money working for over 16 hours a day, staying away from his family.

10. That, it is discerned from HRERA portal that the respondent has registered two projects as 'ongoing' projects with Temp Project Id: RERA-PKL-PROJ-380-2018 for 118.312 acres (Licence No. 878-894 of 2006) and Temp Project Id: RERA-PKL-384-2019 for 84.155 acre (Licence No. 915-945 of 2006). Annual Report of the respondent for its financial year ending 2010 discloses that they had 'received licence for an additional land of approximately 51.55 acres in the existing Integrated Township, Parsvnath City in Sonapat'.
11. Thus, going by the assertions made by Mr. Kharbanda, DGM and Dr. Sachar, V.P. of the respondents, the complainant should have been given possession of his legitimate and rightful plot of land well within the reasonable timelines.
12. That, never in all these years, consequent upon the complainant acquiring interest in the plot as applied, any offer of allotment was made by the respondent. Instead, umpteen emails to respondent, to its various executives and finally to its Chairman Mr. Pradeep Jain and director Mr. Sanjeev Jain followed by sending the hard copy of the same through speed post urging them to deliver the possession of plot, could not bring any result, and, rather these fell on deaf ears. The

conduct of the respondent and its directors has not been above board as per the information available in public domain, demonstrated by various complaints having been filed under various laws by different parties, including under Indian Penal Code; and thus, is indicative of mischievous and malicious conduct and ulterior, malfeasance motive on the part of the respondent and its directors for illegal alienation of land at high prices to other parties to its own advantage or to promoters' personal gratification, illegal gain, and, to the utter disadvantage, loss, detriment, and, uncalled for harm to the gullible complainant. Hence present complaint has been filed.

C. RELIEF SOUGHT

13. The complainant in his complaint has sought following reliefs:
- (i) The complainant be allotted the plot of land 400 sq. yards at respondent's Parsvnath City Sonipat project and possession be given to him without further delay.
 - (ii) The respondent be directed to raise the demand of balance 50% payable towards the basic cost as per customer ledger as agreed upon, after adjusting the interest payable to the complainant for the delayed period of possession, as prayed in Appendix DDD, of this complaint application, along with pendente lite interest as well as future interest, till the date of possession of the plot.

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- (iii) The respondent be directed to pay and remit the excess of interest claimed by and payable to the complainant, after adjusting 50% of the balance amount due towards basic cost chargeable against the plot.
- (iv) The respondent be directed to allot a regular, rectangular and an oblong plot with perfect right angles and not an irregular, rhomboid and poorly located plot in order to dissuade the complainant for accepting the prospective plot, or as a technique to intimidate the complainant for filing the present complaint before the Authority.
- (v) The respondent be directed to pay to the complainant ₹5,00,000/- as compensation for mental agony, loss of peace, harassment, damages and loss of alternate opportunity available during the intervening period.
- (vi) The respondent be directed to pay to the complainant ₹50,000/- towards cost of this present application and litigation before this Authority.
- (vii) Any other relief that the Authority deems appropriate to meet the end of justice.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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


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14. 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.
15. 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.
16. 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.
17. 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.

18. That, on 02.03.2005, Mrs. Bharti Verma (original applicant) expressed her interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹5,63,000/- towards the registration.
19. 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 she shall accept the refund with simple interest at the rate of 10% per annum.
20. That, on 26.03.2007, Mrs. Bharti Verma transferred her interests, rights and liabilities in favor present complainant. A copy of endorsement letter dated 26.03.2007 is annexed as Annexure R-1.
21. That, on 13.02.2007, 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."


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A copy of affidavit-cum-undertaking and indemnity is attached as Annexure R-2.

22. That, the respondent had received an amount of ₹11,27,558/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-3.
23. That, it is a matter of record that the respondent had not demanded any amount from the complainant. The total amount paid to the respondent has been paid by the predecessor in interest of the complainant. 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.
24. 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.
25. That, the complainant before this Authority was well aware of the fact that there was no allotment in favour of his predecessor. Therefore, complainant has misdirected himself in filing the above captioned complaint before this Hon'ble Authority as there is no relationship between the parties before this Hon'ble Authority.
26. 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.

27. That, the complainant is not an allottee of the respondent company as per Section 2(d) of the RERA Act of 2016 as the registration was mere an expression of interest towards the upcoming project of the respondent & purchased the same from open or secondary market. Neither the size nor the project was identifiable at the time of filing of application by original allottee. The size mentioned in customer ledger is annexed is tentative and is just a computer generated document. In the past 14 years, there has been no allotment in favour of the complainant and no plot buyer agreement was ever executed with the complainant or with his predecessor-in-interest. Complainant is bound with the terms and conditions of affidavit cum undertaking which is duly signed by him.
28. 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.
29. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. REJOINDER FILED BY COMPLAINANT

Complainant filed a rejoinder to the reply filed by respondent on 20.06.2022, submitting as under:

30. That the contents of para 1 of reply are refuted. There is no provision under Real Estate (Regulation and Development) Act, 2016 which stipulates that the Act is applicable to only those who have been 'allotted' flats or plots, in the strict sense of the term, 'allotted' as impressed upon by the respondent. Any person, who has paid and entrusted money against the project launched by any promoter after advertising in public, including the ones who booked plots and, including the assignees thereof, and, also those payers who paid money under the projects that were ongoing on the date of enactment of the Act, all shall be allottee for the purposes of the Act. Under the Act or under any previous dispensation as applicable before the enactment of this Act, no one could accept 50% of the cost of plot and term it as an 'expression of interest without complying with the regulatory framework. The receipts issued by the respondent clearly states 'Present'. In fact, the respondents termed it as 'towards Present & Future Project' to suit their perverse purposes.
31. That customer ledger as on 26.03.2007 issued by the respondent at the time of substitution in favour of the complainant, (Annexure P/7, page 27 of complaint), demonstrate that the amount was paid towards the



'present' project only, since it contains all requisite elements of the 'present' project that was being developed, viz., Parsvnath City 'B' Block, Property No.: 1237, size: 400 Sq. yards, rate: ₹5750, discount: 2% - 46,000.00, basic cost: ₹22,54,000, broker: Arihant Estate, Payment Plan: Down Payment Plan. Therefore, only allocation of specific plot number and its delivery was kept pending, and, for which the respondent is accountable under the Act, and hence, the present complaint.

32. That before the enactment of RERA 2016, the colonisers were regulated through 'The Haryana Development and Regulation of Urban Areas Act, 1975', Rules promulgated thereunder, and the licences issued in pursuance thereof. The said legislation regulated the promoters (colonizers), about the ownership and/or collaborative title of land under a proposed colonised project being developed, licensing, publicising or advertising about the project, receipt and keeping of money in a separate account, entering into bilateral agreement with the Director, Town & Country Planning overarching advertisement and allotment of plots, besides many other operational modalities and compliances. Therefore, the colony as was launched and being developed by the respondents in Sonipat as Parsvnath City, and advertised as such, there was no occasion of doubt, to have in the mind of a person booking the plot, that he or she was not applying in a

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'Present' project and intended to apply for any 'Future' project, since the colonisers were prohibited to launch any project and accept any deposit, in contravention of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules framed thereunder.

33. That without prejudice to above, the contention of the respondent is further assailable on the basis of facts contained in the Customer Ledger. An amount of ₹563,000 was received by the respondent on 03.03.2005, which stood as a credit (Advance), which typically may be assumed as 'an expression of interest to buy' at the initial stage. Once that amount got appropriated against the amount due towards 50% of the basic cost (of ₹22.54 Lakhs) on 19.01.2006, there is no cause of respondent to plead that it was not for a 'Present' project as that was launched by the respondent after advertising and publicizing the same.
34. That the contents of para 2 of reply are controverted. There is an express as well as an implied agreement to sale as evidenced by the documents submitted, communications made with the respondents over the long period of time and other surrounding circumstances elaborated in the complaint. The Customer ledger issued by the respondent as on 26.03.2007 clearly mentions 'Parsvnath City 'B' Block, Property No. 1237, size 400 Sq. yards, rate, cost, etc. besides other information. (Annexure P/7, page 27 of complaint).

A handwritten signature in blue ink, appearing to read 'Rathore', is written over a horizontal line.

Inference of allotment of plot of 400 sq. yards, by the respondent therefore, can very well be drawn therefrom. Reference to the Annexure R-15 (Customer Ledger) as on 21.02.2022, as submitted in the reply of the respondent, an amount of ₹82,026.37/- is shown as due on account of interest for the delay in payment received by the respondent. No customer shall pay interest for a product or service, which is unallocated and undefined, which he or she is going to get in future and for which substantial amount is already collected by the respondent. Interest effectively becomes due only under the crystallised terms of an agreement.

35. RERA is a welfare statute and therefore, purposive interpretation of the term 'allottee' needs to be adopted. If for the sake of argument of the respondent that there is no 'agreement of sale' between the parties is accepted, then all those people who book a plot or flat by paying 10% of the amount on application and with whom no agreement has been entered into by a promoter due to the prohibition cast upon it by virtue of section 13(1), they shall never have recourse to the Act. And which is not the legislative intent.
36. That the contents of para 3 of reply are refuted. Not delivering the possession of plot to the complainant for the last over 15 years, as was as booked on the basis of advertisements by the original applicant (Bharti Verma) in 2005 and endorsed on assignment by her in favour

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of the complainant in 2007, and, for which 50% of the cost of plot was received and accepted by the respondent, in itself is one contravention besides many more, viz., non-compliance with section 11(1)(b), section 13 (executing a formal agreement), to cite a few. First proviso to section 3 of the Act mandated registration of ongoing projects within 3 months of its enactment and to comply with all the provisions of the Act, including but not limited to execution of agreement of sale, which the respondent was mandate to do in pursuance of section 11 of the Act read with relevant rule 8.

37. That Hon'ble Supreme Court in *M/s. Newtech Promoters and Developers Pvt. Ltd v. State of U.P. & Ors.* etc. civil appeal no(s). 6745 6749 OF 2021 held:

“..Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest. (Para 45)

51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.”

On enactment of the Act, obligations were cast upon the respondent and the allottee, as well to comply with the regulatory framework and

deliver their respective obligations accordingly. While dismissing the appeal of the promoters in Appeal No. ATO06000000011133 in “*Shree Sukhakarta Developers (p) Ltd. vs. Mr. Sunil Agarwal*”, Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai, propounded in Para 11 of its order, that:

“It is further observed that on RERA coming into force w.e.f. 01.05.2017 and on registration of project thereafter under RERA, the Promoter was obligated as per Section 13 of RERA to register the agreement since Promoter had already received more than 10% amount by then.”

38. That para 4 of the reply contains definition of 'allottee' as per section 2 clause (d) of the Act and needs no comment except that for the purposes of the Act, the term "sold' engrains in it, agreed or intended to be sold on booking. Allottee also includes who acquires interest in a plot or apartment through sale, transfer or otherwise and is substituted as such in place of the original person who booked plot. Against the numerous communications of the complainant over the past 15 years as listed in Appendix 'C' (List of dates) and as evidenced by Annexure P-8 to P-15 (page nos. 29 to 40) of the complaint, the respondent never ever controverted or contested the factual position of sale to the complainant, of the plot of land of 400 square yards at the rate of ₹5,750 (less 2% discount) in Sonipat - Parsvnath City B Block.


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39. That in "*Smt. Manju Gutpa vs M/S Parsvnath Developers Ltd.*" in RCA No. 3/2020 on 12 October, 2021, while referring to Hon'ble Supreme Court judgement in "*Manish Kumar Vs. Union of India*", 2021 SCC Online SC 30, hon'ble Additional Senior Civil Judge, New Delhi District in the judgement writes in paragraph 25 as under:

"..It is pertinent to mention that in the afore noted observation the Apex Court called the person an allottee who invest money in a real estate project and his primary concern is that the project is completed and he gets the possession. Thus, this judgment reflects that the person who books a plot and is waiting for possession is an allottee."

40. That the contents of para 5 of reply are refuted. Complainant never made any representation but, sought through his numerous communications, to get his rightful plot delivered against the payment collected by the respondent. No limitation period is provided under the Act for filing of a complaint. In fact, section 89 of the Act overrides all other statutes, while section 88 speaks about application of the Act in addition, but not in derogation of other laws, and thus, the Limitation Act 1963 has no application on the present complaint. Cited judgment of the Hon'ble Supreme Court (*Surjeet Singh Sahni v. State of UP and Others*) by the respondent, has no application at all to the facts and circumstances surrounding the present complaint. The facts of the cited case are totally different, as it was an SLP that was

dismissed by the Hon'ble SC, whereby a farmer (who also was not an original khatedar) wanted to enforce his specific rights through a Writ Petition under Article 226 in Allahabad High Court under the sale deed of the plot of land he sold to NOIDA. Primarily, it was a case of the writ petition not maintainable being arising out of a contract between the parties. Here in the present case, it is a complaint that relates to redressal of the rights of an allottee complainant under the Act, against the misdemeanor of the respondent by not fulfilling its obligations as the promoter of a real estate project. Without prejudice to the above, till the time the respondent fulfills its obligations, which is in continuity, and, for which the consideration was accepted by it, the limitation shall not trigger. In a case under Consumer Protection Act, 2006 wherein Section 24.4, though provides for limitation period for filing complaints under the said Act, it was propounded by the Hon'ble National Commission that objection of limitation cannot survive because cause of action in the case of possession is continued (Satish Pandey III (2015) CPJ 440), [Para 9 as culled out from Order of The Delhi State Consumer Disputes Redressal Commission in Complaint No. 63/2016 in the matter of *Sushila Gupta Ankur Gupta vs. Parsvnath Developers Ltd.*]. Howsoever, in RERA, no limitation period is provided for moving a complaint as stated before.



41. That under the Act, the legislative intent is very clear for non-application of 'limitation' due to the overriding effect of the Act by application of section 89 and also by the specific expression used in section 18(2), that reads, ... *'the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force'*. While dismissing the appeal of the promoters in Appeal No. AT006000000011133 in 1) *M/s. Siddhitech Homes Pvt. Lid.* 2) *Hemant Mohan Agarwal vs. Karanveer Singh Sachdev & Others*, Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai, propounded as under:

“Agreeing entirely with the Allottee, it is observed that RERA no where provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time lime limit for filing complaint reliefs provided thereunder cannot be denied to Allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to Developers placing reliance on the case law cited supra to render the complaint of Allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue.


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

42. During oral arguments both parties reiterated their arguments as were submitted in writing. 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 Nishant Bansal versus Parsvnath Developers Ltd.** squarely covers the controversy involved in the above-mentioned complaint. Hence, this complaint be disposed of in the same manner.
43. Learned counsel for the respondent reiterated the arguments as were submitted in writing and were made in complaint case no. 723 of 2019. She further argued that in bunch of cases with lead case no. 723 of 2019 titled "Nishant Bansal versus Parsvnath Developers Ltd.", in some cases name of project was mentioned and hence entire bunch was disposed by the Authority after detailed enquiry and considering the documents on record. However, in the present case, there is no proof that booking was made for 'Parsvnath City, Sonapat' and there is no agreement between the parties which can be executed by the Authority. So, in absence of any agreement to sell, complainant is bound by terms of affidavit-cum-undertaking and indemnity signed by him and shall accept refund of the amount deposited by him. She further argued that appeals have been filed in bunch of cases with lead

case no. 723 of 2019 before Hon'ble High Court, so outcome of those appeals may be awaited.

G. ISSUES FOR ADJUDICATION

44. 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. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

45. On perusal of record and after hearing both the parties, Authority observes that 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 as 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."

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“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. The preamble provides that it shall be the function of the Authority to ensure sale of plot, apartment or building in an efficient and transparent manner. Further, a bare perusal of the definition of “allottee”, it is clear that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter, exchange of development rights etc. Upon careful perusal of documents on record (including receipts of payment issued by respondent), it is revealed that original applicant had paid a sum of ₹5,63,000/- for purchasing a plot measuring 400 sq. yards in present and future project of respondent. As stated by respondent in his reply, the original applicant had an understanding with respondent and as per clause F of the application form it was agreed between the parties that in case no allotment is made in her favour, she would accept refund with simple interest at the rate of 10% per annum. The fact that the respondent had



accepted subsequent other payments (of amount ₹5,64,558/-) from the predecessor of the complainant apart from the initial booking amount which was paid by the original allottee and issued receipts for the same clearly shows that respondent had recognised the original applicant as his allottee. Thereafter, the plot was transferred in the name present complainant and endorsement in his favour was made on 26.03.2007, whereby it was acknowledged by the promoter that he has accepted the complainant as the allottee against the unit booked by the original allottee.

46. If argument of respondent is accepted that there was no “agreement for sale” between the parties, it would imply that respondent, who is into the business of real estate development had accepted payment of almost fifty percent of the basic sale price and issued receipts to predecessors of the complainant for ‘nothing in return’, which is impossible and hard to believe. Mere fact that an allotment letter specifying the unit no. was not issued to original allottee does not mean that she was not an allottee of the respondent. Once respondent has accepted the application form and multiple payments from original allottee for purchase of a unit in his project and has agreed to sell the plot as per price mentioned in application form, it was obligation of the promoter to allot her a unit no. within a reasonable time. Failure on its part to do so will not affect the rights of applicant as an allottee. It

is observed that the promoter has repeatedly raised demands for a unit and accepted almost fifty percent of the basic sale price of the unit and therefore such huge amount cannot be considered as mere 'expression of interest.'

The Authority is of the view that in cases where the promoter has accepted an application form and raised subsequent/multiple demands and still failed to sign a builder buyer agreement, then in such cases even an application form which specifies the details of unit booked by the complainant such as area of the plot, price, concession in price etc will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement. Further, the booking was made by the original allottee in the year 2005 and the endorsement was made in the favour of the complainant in the year 2007 i.e. prior to RERA Act coming into force. Therefore, at that time no prescribed format was provided for an agreement for sale. Accepting the payment towards a unit in present and future project shows there was a meeting of minds on the point that the promoter will give possession in "present and future project" developed by respondent in Sonapat. Further, the customer ledger dated 26.03.2007 issued by the respondent at the time of substitution

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/endorsement in favour of the complainant makes it apparent that amounts of almost fifty percent of the basic sale price were accepted towards the project "Parsvnath City, B Block", since it contained all pivotal information of the project and unit such as project name 'Parsvnath City, B Block, property no. 1237, size of plot 400 sq. yards, rate 5,750/- per sq. yard, basic cost ₹22,54,000/- and payment plan as down payment plan. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that original allottee booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot'. Accordingly, the original applicant was very much "allottee" for the unit in the project "Parsvnath City, B Block, Sonapat". Further the original allottee transferred her rights by way of an endorsement in favour of the present allottee i.e. the complainant. It is pertinent to mention that the definition of allottee as provided under Section 2(d) of the Act of 2016 does not distinguish between original/erstwhile allottee and subsequent allottee. Therefore, the complainant in this case after endorsement in his favour stepped into the shoes of the original/erstwhile allottee and complainant is well within the definition of the term allottee as provided in the Act.



Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.

47. Another objection of respondent is that there is no proof that booking was made for 'Parsvnath City, Sonapat' and there is no agreement between the parties which can be executed by the Authority. Said argument of respondent is rejected for the reason that customer ledger dated 26.03.2007 annexed as annexure P-7 with complaint clearly depicts the name of the project ie 'Parsvnath City, B BLock' along with other important information such as property no. 1237, size of plot 400 sq. yards, rate 5,750/- per sq. yard, basic cost ₹22,54,000/- etc. So, present case stands at a better footing than complaint case no. 723 of 2019 titled Nishant Bansal versus Parsvnath Developers Ltd.
48. Further, another objection raised by respondent is that complaint is barred by limitation. In this regard it is observed that since, the promoter has till date failed to fulfil his obligations to hand over the plot of 400 sq. yards in the project "Parsvnath City, B Block, Sonapat", the cause of action continues till date and the ground that complaint is barred by limitation stands rejected.
49. 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 letter was issued nor any builder buyer agreement was been

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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 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 Parsvnath Developers Ltd.**

50. It is pertinent to mention here that respondent ‘Parsvnath Developers Ltd.’ had filed an appeal no. 327 of 2020 before Hon’ble Haryana Real Estate Appellate Tribunal, Chandigarh against order dated 11.03.2020 passed in complaint no. 723 of 2019 which was dismissed by Hon’ble Tribunal vide its order dated 31.10.2022. Operative part of order dated 31.10.2022 is reproduced below:

“24. Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the

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date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.

25. Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonapat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.”

51. Therefore, complainant will be entitled to interest for delay in handing over the possession as per Rule 15 Haryana Real Estate (Regulation & Development) Rules, 2017 till the handing over of possession as observed by Hon'ble Appellate Tribunal in its order dated 31.10.2022.
52. Complainant is also seeking damages on account of mental agony, loss of peace, harassment, damages and loss of alternate opportunity available during the intervening period and litigation charges. 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of damages and compensation.

I. DIRECTIONS OF THE AUTHORITY

53. Hence, the Authority incorporating the modifications made by Hon'ble Appellate Tribunal 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 allot and deliver the possession of booked plot to the complainant in the project 'Parsvnath City, Sonapat' on payment of balance sale consideration recoverable from him. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant, 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.



(ii) Respondent is also directed to pay the complainant interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.70% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.

(iii) Alternatively, if the allottee wish to purchase equivalent size plots of his own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, he is at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.70% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.

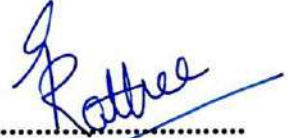
(iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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54. **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]