



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1009 of 2021
Date of filing:	24.09.2021
Date of first hearing:	26.10.2021
Date of decision:	14.03.2023

Narendra Pal Gupta deceased through LRs:

1. Neelam Gupta W/o Late Sh. Narendra Pal Gupta
2. Karan Gupta S/o Late Sh. Narendra Pal Gupta
3. Bhavya Gupta D/o Late Sh. Narendra Pal Gupta

R/o Flat no. 1, Buddha Apartment, CC Colony,

Opposite Rana Partap Bagh,

Delhi - 110007

....COMPLAINANT(S)

VERSUS

Parsynath Developers Ltd.

Office: G2, Ground Floor, Arunachal 19, Barakhamba road,

New Delhi - 110001.

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: -

Mr. Akshat Mittal, counsel for the complainant

Ms. Isha, counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 24.09.2021 has been filed by legal heirs of Sh. Narendra Pal Gupta (original allottee) 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 Prabit Kumar Das (original allottee), the details of sale consideration, the amount paid by him 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	01.06.2004
3.	Unit area	300 sq. yards (Pg-7 complaint)
4.	Date of endorsement in favour of complainant	25.10.2007
5.	Date of allotment	Not made



6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹10,50,000/-
8.	Amount paid by complainant	₹5,62,500/-
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 Mr. Prabit Kumar Das (original applicant) booked a plot measuring 300 sq. yards @ ₹3,500/- per sq. yard in respondent's project under 'Present and Future Scheme' in the year 2004, launched by respondent company at Sonapat, Haryana by paying booking amount of ₹1,60,000/-. Mr. Prabit Kumar Das sold his booking rights to Sh. Navneet Nasa in 2006 from whom the booking rights were purchased by Late Sh. Narendra Pal Gupta and the same was endorsed by respondent in his favour vide letter dated 25.10.2007. Copy of said letter has been annexed as Annexure C-1. Till date a sum of ₹5,62,500/- stands paid to the respondent against basic sale consideration of ₹10,50,000/-. Complainants have annexed copies of payment receipts as Annexure-C-2 colly.
4. It has been contended that at the time of endorsement in October 2007, respondent assured that plot would be allotted to Late Sh. Narendra



Pal Gupta within six months i.e latest by 25.04.2008 but respondent failed to allot any plot till date. Several letters were sent to respondent asking for allotment, telephonic calls were made but in vain. Respondent neither replied to letters nor allotted any plot. Evenmore, no builder buyer agreement has been executed between the parties.

5. That due to this act of the respondent, Late Sh. Narendra Pal suffered from prolonged stress, anxiety and grave ailments ultimately resulting into his death. After death of Late Sh. Narendra Pal Gupta, his legal representatives have neither been offered refund and compensation of the amount paid nor possession of the plot. So, present complaint has been filed by Smt. Neelam Gupta (wife), Sh. Karan Gupta (son) and Smt. Bhavya Gupta (daughter) being legal representatives/heirs of Late Sh. Narendra Pal Gupta.

C. RELIEF SOUGHT

6. The complainants in their complaint have sought following reliefs:
- (i) To direct the respondent to immediately allot hand over the physical possession of the plot to the complainant, duly coupled with occupation certificate.
 - (ii) To direct the respondent to compensate for the delay in offer of possession of the plot, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation and Development) Rules,



on the entire deposited amount which has been deposited against the plot in question so booked by the complainant.

- (iii) In case the respondent company is unable to immediately allot and offer possession of the plot to the complainant then the learned Authority may kindly direct the respondents to refund the entire amount which has been deposited against the plot in question so booked by the complainant along with interest @18% per annum compounded annually, or with interest as prescribed, as may be deemed fit by the learned Authority, on the amounts from the respective dates of deposit till its actual realization within 90 days according to Section 18(1) Real Estate (Regulation And Development) Act 2016 read with 15 & of 16 Haryana Real Estate (Regulation and Development) Rules, 2017.
- (iv) To direct the respondent to pay an adequate compensatory interest on the entire deposited amount for not allotting a particular plot and for not offering the possession thereof, as deemed fit by the Authority.
- (v) To direct the respondent to pay a sum of ₹50 lac on account of grievance, frustration, ignorance, resulting into grave illness ultimately resulting in the death of the complainant.



- (vi) The registration, if any, granted to the respondent for the project namely, "Sonepat Project" situated in the revenue estates of Sonepat, Haryana, under RERA read with relevant rules may kindly be revoked under section 7 of the RERA for violating the provisions of the Act.
- (vii) The complaint may be allowed with costs and litigation expenses of ₹1,50,000/-.
- (viii) Any other relief as this Hon'ble Authority deem fit and appropriate in the facts and circumstances of the complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.10.2022 pleading therein:

7. That, the present complaint is not maintainable before this Hon'ble Authority for the reason that the complainants are not an allottee of the respondent company.
8. That, the complainants are seeking compensation and the relief so sought is not maintainable before this Hon'ble Authority.
9. That the complaint is barred by limitation and therefore is liable to be dismissed on this ground alone.
10. That, on 01.06.2004, Mr. Prabit Kumar Das (original applicant) expressed his interest in the booking of a plot in any of the



new/upcoming project of the respondent and paid ₹1,60,000/- towards the registration.

11. That, the original applicant, while filling the application form gave undertaking that in case no allotment is made, and he shall accept the refund. The relevant clause of the application form is mentioned here under:-

“(f) Though the company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

12. That, on 23.01.2006, the registration slip for the project of present and future was transferred in the name of Mr. Navneet Nasa. On 25.10.2007, Mr. Narendra Pal Gupta bought the receipts from Mr. Navneet Nasa from open market and executed an 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.”



13. That, the respondent had received an amount of ₹5,62,500/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-4.
14. That, it is a matter of record that the respondent had not demanded any amount from the complainant after 2007 which establishes the fact that registration was mere an expression of interest towards the future project of the respondent.
15. 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.
16. That as per records of respondent company, the advance registration is still in the name of Mr. Narendra Pal Gupta and has not been endorsed in favour of legal representatives/successors/beneficiaries.
17. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

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

18. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainants submitted that complainants/legal representatives are willing to accept refund of the amount deposited by them along with interest. Learned counsel for respondent also stated that respondent does not have any plot available



with them to be offered to complainant, but is ready to refund the amount.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

20. Case was heard at length on 30.03.2022 and Authority had allowed relief of refund in favour of complainants/legal representatives along with interest. Relevant part of order dated 30.03.2022 is reproduced below for reference:

“4. After hearing the arguments of both the parties and going through the documents on record, it is observed that that in the captioned complaint booking was made in present and future scheme, no agreement has been executed till date, complainants/legal representatives interested to withdraw from the project and want refund of the amount deposited, respondent has expressed its inability to offer plot to the complainant/legal representatives and is interested to refund the amount deposited. For these reasons, a case is clearly made out to allow relief of refund as sought by complainant/legal representatives. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant/legal representatives deserves to be granted.

5. Further, respondent's contention that complainants shall be awarded refund from the date of endorsement in favour of Late Sh. Narendra Pal Gupta does not hold any merit for the reason that from the moment he purchased the booking rights from Sh. Navneet Nasa, he stepped into the shoes of his predecessors-in-interest and all rights and liabilities of his predecessors will accrue to him. Respondent can't be



allowed to take this benefit that since endorsement in favour of Late Sh. Narendra Pal Gupta was made in 2007, interest should be given from 2007 and not from 2004 (when original applicant booked the plot). Respondent has retained the money of the complainants/legal representatives from 2004 and mere fact that Late Sh. Narendra Pal Gupta purchased the booking rights in 2007 will not affect his rights accruing from 2004. For said reasons, respondent's contention is rejected and Authority holds that the complainants/legal representatives are entitled for refund of the amounts deposited by them along with interest at the rate prescribed in Rule 15 of RERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to 9.30% (7.30% + 2.00%) from the date amounts were paid till today.

6. During hearing this case was announced to be disposed of allowing refund in favour of complainants/legal heirs. However, after examining the case file it has been revealed that complaint has been filed by legal representatives of Late Sh. Narendra Pal Gupta but no death certificate of Late Sh. Narendra Pal Gupta has been placed on record by the complainants/legal representatives. Even the complaint is silent about the date of death of Late Sh. Narendra Pal Gupta. Also, it has been contended in the complaint that since, Smt. Bhavya Gupta resides in United States of America, Smt. Neelam Gupta will be the signing authority and General/Special Power of Attorney in name of Smt. Neelam Gupta has been annexed as Annexure C-5. On perusing Annexure C-5, Authority finds that Annexure C-5 is a copy of No Objection Certificate of Smt. Bhavya Gupta issued in favour of her mother Smt. Neelam Gupta and no General/Special Power of Attorney in name of Smt. Neelam Gupta has been annexed with the complaint. Further, neither any legal heir certificate/succession certificate nor any affidavit has been placed on record stating therein that complainants are the only legal heirs/representatives of Late. Sh. Narendra Pal Gupta.

Hence, Authority observes that present case can't be disposed of in absence of above said documents. It orders that relief of refund is admissible and respondent will return the amount of ₹5,62,500/- along with interest



of ₹8,68,663/-, total amounting to ₹14,31,163/- to the complainants/legal representatives. However, this matter is being fixed for rehearing only for determining the rightful legal heirs who would be entitled to receive the money ordered to be refunded by the Authority.

7. Adjourned to 26.07.2022."

21. The matter was adjourned to 30.03.2022 to determine the rightful heirs of Mr. Narendra Pal Gupta (deceased) who would be entitled to receive the money ordered to be refunded. In compliance of order dated 30.03.2022, complainants/legal representatives filed affidavits on 21.07.2022 declaring that they are only legal heirs and placed on record death certificate of Mr. Narendra Pal Gupta.
22. Thereafter the matter was heard on 26.07.2022, whereby complainants/legal representatives of Mr. Narendra Pal Gupta were directed to make publication with respect to their claim being only legal heirs in one national and one local newspaper which is in frequent circulation in the locality.
23. On 28.02.2023, complainants/legal representatives have filed proof of publication made in "The Hindu" (national newspaper) and "Rashtriya Sahara" (local newspaper) in compliance of order dated 26.07.2022.
24. Since, no objection has been received from anyone regarding the fact that the complainants/legal representatives are only legal of Mr. Narendra Pal Gupta, Authority decides to confirm the decision already taken vide its order dated 30.03.2022 which shall form part of this

order and allows the complaint filed by complainants/legal representatives. For these reasons, a case is clearly made out to allow relief of refund as sought by complainants/legal representatives. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainants/legal representatives deserves to be granted.

25. Accordingly, respondent will be liable to pay the complainants/legal representatives interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants/legal representatives the paid amount of ₹5,62,500/- 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 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got recalculated the total amount along with interest calculated at the rate of 10.70% till the date of this order and said amount works out to ₹16,19,477/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 14.03.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹1,60,000/-	01.06.2004	₹3,21,809/-	₹4,81,809/-



2.	₹3,65,000/-	22.12.2005	₹6,73,244/-	₹10,38,244/-
3.	₹37,500	12.10.2007	₹61,924/-	₹99,424/-
Total	₹5,62,500/-		₹10,56,977/-	₹16,19,477/-

26. 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 300 sq. yards in its project, the cause of action continues till date and the ground that complaint is barred by limitation stands rejected.
27. Complainants/legal representatives are also seeking compensation and damages on account of grievance, frustration, ignorance, resulting into grave illness and ultimately death 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 complainants/legal representatives are advised to approach the Adjudicating Officer for seeking the relief of damages and compensation.

28. Complainants/legal representatives are also seeking relief that registration, if any, granted to respondent for project namely "Sonepat Project" may be revoked. 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, complainant's prayer to revoke the registration of project of respondent is rejected.

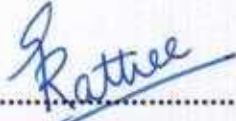
H. DIRECTIONS OF THE AUTHORITY

29. 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 refund the entire amount of ₹16,19,477/- to the complainants/legal representatives.
- (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.



30. **Disposed of.** File be consigned to record room after uploading the order on the website of the Authority.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

