



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1085 of 2022
Date of filing:	31.05.2022
Date of first hearing:	02.08.2022
Date of decision:	14.03.2023

Rama Satija,
W/o Sh. Ashok Kumar Satija,
R/o House no. 177, First Floor, Kalyan Vihar,
New Delhi.

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd. through its Managing Director
Office: Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: -

Ms. Aakanksha Kochar, counsel for the complainant
through video conference

Ms. Isha, counsel for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 31.05.2022 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	17.08.2004
3.	Unit area	400 sq. yards (Pg-10 complaint)
4.	Date of endorsement in favour of complainant	28.05.2008
5.	Date of allotment	Not made



6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹13,96,800/-
8.	Amount paid by complainant	₹7,48,400/-
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 August 2004, Mrs. Janak Rani (original applicant) booked a plot measuring 400 sq. yards in a township named 'Parsvnath City, A Block' under 'Present and Future Scheme' launched by respondent company at Sonapat, Haryana by paying booking amount of ₹2,00,000/-. Mrs. Janak Rani (original applicant) thereafter made payment of ₹4,98,400/- to respondent on 24.12.2005. Meaning thereby a sum of ₹6,98,400/- was paid by Mrs. Janak Rani (original applicant) by the year 2005. Copies of payment receipts have been annexed as Annexure P-1 and P2. Thereafter, Mrs. Janak Rani sold the booking rights in the plot to Mr. Ravinder Singh who then paid an amount of ₹50,000/- to respondent on 08.05.2008. Copy of payment receipt has been annexed as Annexure P-4. Hence, a sum of ₹7,48,400/- stood paid to the respondent by the year 2008 against basic cost of ₹13,96,800/-. Mr. Ravinder Singh sold the booking rights in the plot to the present complainant and endorsement

had

in her favour was made on 28.05.2008. Copy of endorsement letter has been annexed as P-3 with the complaint.

4. Since the date of booking/endorsement of plot in her favour, complainant was regularly visiting the project site and was shocked to see that the development on the project site was going on at snail speed and road approachable to the project was not made out by respondent. The complainant even met with the officials of the respondent company and requested them to apprise with regard to development at site and delivery of possession of the plot, but they failed to give any satisfactory reply to the queries of the complainant.
5. That the complainant waited till the year 2014 for completion of the project and to get possession of the plot and thereafter approached the respondent to know about the status of the completion of the project. The respondent expressed their inability and informed the complainant that they had failed to take necessary permission from various authorities to complete the construction of their projects including the project in which the complainant had got her booking with the respondent. Complainant vide letter dated 23.07.2014 requested the respondent to inform about the status of the plot and when possession will be delivered to her. Complainant even demanded that along with possession of the plot, she be given compensation along with interest for the default period.



6. Thereafter, respondent came with a new proposal to complainant to give alternate possession of the similar sized plot in their project at Karnal or Rajpura within 6 months and advised the complainant to take possession there instead of Sonapat. Copy of said email dated 24.03.2015 is annexed as Annexure P-6 with the complaint. That the respondent also sent second proposal to the complainant through email dated 24.03.2015. However, for some reasons, said proposals were not agreeable between the complainant and the respondent as respondent was not agreeable on compensation the complainant with interest in handing over the possession of the plot in Parsvnath City, Sonapat.
7. That registered notice dated 05.02.2018 was sent to respondent asking him to give the allotment of the plot booked by the complainant in A – Block, Parsvnath City, Sonapat alongwith interest @24% p.a. from 08.05.2008 but the respondent neither complied with the same nor replied the same.
8. Complainant has physically inspected the site and it has come to his knowledge that there is no scope of handing over possession of residential plot in question as on the project site the development of the area is very limited. It has also come to knowledge of complainant that requisite approvals from the authorities have also not been received by respondent. It has been alleged by complainant that the construction of the project is still pending and development of the



project is at halt and project is far from completion. No offer of possession has been made despite lapse of more than 17 years from date of booking. Hence, present complaint has been filed.

C. RELIEF SOUGHT

9. The complainant in his complaint has sought following reliefs:

- (i) To direct the respondent to hand over possession to the complainant in respect of the plot measuring 400 sq. yards at the project of the respondent company namely Parsvnath City, Sonapat.
- (ii) To direct the respondent to pay interest for the default period i.e. from 08.05.2008 till the respondent handed over the possession of the plot to the complainant alongwith interest @24% per annum.
- (iii) To direct the respondent to pay ₹10 lac as compensation to the complainant because of escalation in the rates of construction.
- (iv) To direct the respondent to pay compensation to the tune of ₹5 lac for mental agony and harassment suffered by the complainant.
- (v) To direct the respondent to pay punitive damages to the extent of ₹5 lac.
- (vi) To direct the respondent to pay the litigation expenses to the tune of ₹55,000/-.



- (vii) Any other order or direction which this Hon'ble Authority may deem fit and proper in the peculiar facts and circumstances be issued in favour of the complainants and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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

10. 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.
11. 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.
12. 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.
13. 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.

14. That, on 17.08.2004, Mrs. Janak Rani (original applicant) expressed her interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹2,00,000/- towards the registration.

15. 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. 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.”

A copy of the application form dated 17.08.2004 signed by the original applicant is annexed with reply as Annexure R-1.



16. That, on 08.02.2006, Mrs. Bharti Verma transferred her interests, in favour of Mr. Ravinder Singh. On 28.05.2008, Mr. Ravinder Singh transferred/endorsed his interest in favour of present complainant. A copy of endorsement letter dated 28.05.2008 is annexed as Annexure R-2.
17. That, on 08.05.2008, 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, she 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."
- A copy of affidavit-cum-undertaking and indemnity is attached as Annexure R-3.
18. That, the respondent had received an amount of ₹7,48,400/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-4.
19. That, it is a matter of record that the respondent had not demanded any amount from the complainant after 2008. 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.

20. 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.
21. That, the complainant before this Authority was well aware of the fact that there was no allotment in favour of her predecessor. Therefore, complainant has misdirected himself in filing the above captioned complaint before this Hon'ble Authority as there is neither any allotment nor any agreement to sale which can be adjudicated by this Authority.
22. 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.
23. 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.



24. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. REJOINDER FILED BY COMPLAINANT

25. Complainant has filed rejoinder dated 18.01.2023 to reply filed by respondent wherein the submissions made by respondent in reply has been denied. It has been submitted that respondent is incorrect in saying that name of project was not confirmed whereas in receipt dated 08.05.2008 for a sum of ₹50,000/-, respondent has accepted that the he is accepting the amount in their project situated at Sonapat. Said receipt is already annexed with complaint as Annexure P4. It has been submitted that complaint filed by the complainant is week within limitation because a recurring cause of action has arisen to complainant because of non-allotment of unit by respondent to the complainant as agreed. The has accepted more than 50% of basic cost from the complainant and has failed to even send draft of proposed agreement to be signed from the complainant. However, the complainant never refused to sign any agreement at any point of time.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

27. 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, Sonepat' 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 her and shall accept refund of the amount deposited by her. 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

28. Whether the complainant is entitled to relief of possession of plot booked by her 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

29. 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, it is important to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:

"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."

On 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, it is revealed that original applicant had paid a sum of ₹2,00,000/- for purchasing a plot measuring 400 sq. yards in next project of respondent and it was agreed between the parties that respondent shall allot a residential plot to applicant and in case he fails to do so for any reason whatsoever, advance money paid by applicant shall be refunded to her with 10% interest per annum. However, subsequent thereupon the respondent promoter accepted payments of ₹4,98,400/- from the original allottee Mrs. Janak Rani. The fact that the respondent had accepted subsequent other payments from the predecessor of the complainant apart from the initial booking amount which was paid by the original allottee and had 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 of Mr. Ravinder Singh who paid the amount of ₹50,000/- to the respondent and then in favour of present complainant. Endorsement in her favour was made by the respondent promoter on 28.05.2008. Acceptance of multiple payments and subsequent transfer by way of endorsement in favour of the complainant shows that the complainant is a subsequent allottee and is covered within the definition of allottee as provided under Section 2(d) of the RERA Act of 2016.

30. Respondent in his reply has contended that there is no "agreement to sale" between the parties and therefore relief sought under Section 18



of RERA Act is not maintainable. If argument of respondent is accepted that there was no "agreement to sale" between the parties, it would imply that respondent, who is into the business of real estate development had accepted payment of ₹7,48,400/- i.e. more than 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 a particular unit no. was not issued to original allottee or a builder buyer agreement was not signed by the original allottee does not mean that she was not an allottee of the respondent. Once respondent has accepted the application form and received 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 his duty to allot her a specific unit no. and execute a builder buyer agreement 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 i.e. more than fifty percent of the basic sale price of the unit and therefore same cannot be considered as mere 'expression of interest.'

Even an application form which specifies the details of unit such as area of the plot, price and concession in price etc, booked by complainant 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. 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 any present or future project developed by respondent in Sonapat. Further receipt dated 08.05.2008 issued by respondent for a sum of ₹50,000/- makes it apparent that amounts were accepted towards the present and future project of respondent at 'Sonapat'. 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 project of respondent at Sonapat. 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 her 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.

31. Another objection of respondent is that there is no proof that booking was made for 'Parsvnath City, Sonepat' 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 receipt dated 08.05.2008 issued by respondent for a sum of ₹50,000/-, annexed as Annexure P4 with the complaint clearly depicts that booking was made for present and future project at 'Sonepat'.
32. 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 its project, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected.
33. 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 executed between the parties and complainant is seeking possession of the plot booked by her. 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.**

34. 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 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 Sonipat, 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.”

35. 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.
36. Complainant is also seeking compensation and damages on account of escalation in rate of construction, mental agony, harassment 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

37. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act incorporating the modifications made by Hon'ble Appellate Tribunal 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 her. 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 her 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 her 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, she 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.

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


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


.....
NADIM AKHTAR
[MEMBER]