



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint nos.:	1846 & 1847 of 2022
Date of filing:	29.07.2022
Date of first hearing:	28.09.2022
Date of decision:	20.03.2023

Name of Builder	Parsvnath Developers Ltd.
Project Name	Present and Future projects; Location: Parsvnath City, Sonapat

Sr. No.	Complaint No.	Complainant
1.	1846 of 2022	Smt. Kiran Goel, W/o Sh. Sushil Kumar Goel R/o H.No. 23/532, Near Hindu Vidya Peeth, Kath Mandi, Sonapat
2.	1847 of 2022	Sh. Sushil Kumar Goel S/o Sh. Atma Ram Goel, R/o H.No. 23/532, Near Hindu Vidya Peeth, Kath Mandi, Sonapat

VERSUS

Parsvnath Developers Ltd. through its managing Director/Chairman
Regd. Office: Parsvnath Towers,
Near Shahdara Metro Station, Shahdara
Delhi - 110032

....RESPONDENT(S)

S. Rastogi

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Present: - Mr. Vikas Deep, counsel for the complainants through
 video conference (in both complaints)
 Ms. Isha, counsel for the respondent (in both complaints)

ORDER (Dr. GEETA RATHEE SINGH -MEMBER)

1. Present complaints dated 29.07.2022 have been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of both the complaints are identical and relate to the same project of the respondent, i.e., "Parsvnath City, Sonapat". Therefore, Authority by passing a common order shall dispose of both captioned complaints. Complaint No. 1846 of 2022 titled Kiran Goel versus Parsvnath Developers Ltd. has been taken as lead case for disposal of both matters.

A handwritten signature in blue ink, appearing to read 'Geeta Rathee', is written over the page number.

A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the units booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

(i) Complaint no. 1846 of 2022

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Parsvnath City, Sonapat
2.	Name of promoter	Parsvnath developers Ltd.
3.	Date of application by complainant	24.08.2004
4.	Unit area	300 sq. yards (Pg-2 complaint)
5.	Date of builder buyer agreement	Not executed
6.	Total sale consideration	₹10,80,000/-
7.	Amount paid by complainant	₹5,40,000/-
8.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT NO. 1846 OF 2022

4. Facts of complainant's case are that on 24.08.2004, complainant booked a plot measuring 300 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 ₹1,75,000/- to the respondent. Copies of payment receipts have been annexed as Annexure C-1 and C-2.

2. That on the pretext of allotment of plot, respondent demanded an amount of ₹3,65,000/- and same was deposited by complainant on 22.12.2005. Copy of payment receipt has been annexed as Annexure C-4, meaning thereby a sum of ₹5,40,000/- was paid to the respondent by the year 2005. That even after depositing around fifty percent of the total amount payable in respect of the plot, no plot buyer agreement was executed by the respondent nor the plot was allotted by the respondent.
3. That the complainant visited the office of respondent company several times and respondent had assured the complainant that allotment shall be done on completion of development work but till date respondent has not allotted the plot nor even initiated the development of the project. The respondent has failed to complete the project and develop the same even after lapse of 18 years from the date of booking. Hence present complaint has been filed.

C. RELIEF SOUGHT

4. The complainant in her complaint has sought following relief:
 - (i) The respondent may kindly be directed to allot the plot and to give possession of the plot alongwith statutory interest on delayed period.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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

6. 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.
7. 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.
8. 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.
9. 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 do 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, her claim should be dismissed.

10. That, on 24.08.2004, complainant expressed her interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹1,75,000/- towards the registration.

11. That, neither location nor site of the project was confirmed therefore, the complainant, 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 24.08.2004 signed by the complainant is annexed with reply as Annexure R-1.

12. That, perusal of clause F of the application form would show that while proceeding ahead with the purchase, the complainant has clearly understood that no allotment was made in her favour and she has further given the undertaking that in case no allotment is possible in future, she would accept refund with simple interest at the rate of 10% per annum.

13. That, the respondent had received an amount of ₹5,40,000/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-3.
14. That, it is a matter of record that the respondent had not demanded any amount from the complainant. That, in absence of any agreement to sale, the complainant is bound by the terms & conditions of the application form duly signed by her.
15. That, the complainant has misdirected herself in filing the above captioned complaint before this Hon'ble Authority as complainant does not even fall within the realm of jurisdiction of this Authority as there is neither any allotment nor any agreement to sale which can be adjudicated by this Authority.
16. 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.
17. 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 location of allotment was ever promised and the registration is mere expression towards said advance registration.


S. Rathore

18. 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

19. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for 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.
20. 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 application form 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.

F. ISSUES FOR ADJUDICATION

21. 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?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

22. 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 pivotal to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provisions are 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."

Upon 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, it is revealed that complainant had paid a sum of ₹5,40,000/- for purchasing a plot measuring 300 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. The fact that the respondent had accepted subsequent other payments from the complainant apart from the initial booking amount which was paid by her and had issued receipts for the same which clearly shows that respondent had recognised the complainant as his allottee.

23. 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 the complainant for 'nothing in return', which is impossible and hard to believe. Mere fact that an allotment letter specifying a unit no. was not issued to complainant does not mean that she was not an allottee of the

respondent. Once respondent has accepted the application form along with multiple payments from complainant for purchase of a unit in his project and has agreed to sell the plot as per price mentioned in application form, it was the obligation of respondent to allot her a unit no. within a reasonable time. Failure on his 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. almost 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 and specially with respect to agreement entered into between the allottee and the promoter before RERA Act of 2016 coming into force. The agreement may be in any form/mode. Accepting the payment towards a unit in present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project developed by respondent. 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 show that complainant booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot'. Accordingly, the complainant was very much "allottee". Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.

24. Another objection of respondent that case is not similar to Nishant Bansal is also rejected for the reason that in Nishant Bansal case also, the name of the project was not mentioned and Authority after due enquiry had awarded relief of possession to the complainants in 'Parsvnath City, Sonapat. In the present case also, adopting the same reasons as mentioned in Nishant Bansal's case, Authority observes that present case is similar to complaint case no. 723 of 2019 titled Nishant Bansal versus Parsvnath Developers Ltd.

25. 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 'Parsvnath City, Sonapat', the cause of action is recurring and the legal objection that complaint is barred by limitation stands rejected.

26. 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 almost 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.**
27. 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/allotees 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.”

28. 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 valid possession as observed by Hon'ble Appellate Tribunal in its order dated 31.10.2022.

H. DIRECTIONS OF THE AUTHORITY

29. Hence, the Authority hereby passes this common 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:

- (i) Respondent is directed to allot and deliver the possession of booked plot to the complainants in the project 'Parsvnath



City, Sonapat' on payment of balance sale consideration recoverable from them. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to them 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 complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plot.

(ii) Respondent is also directed to pay the complainants 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.

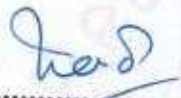
(iii) Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the respondent in District Sonapat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.70% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of

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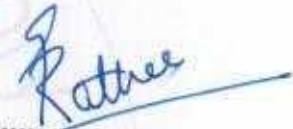
plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.

(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.

30. **Disposed of.** Files be consigned to record room and order be uploaded on the website of the Authority.



.....
NADIM AKHTAR
[MEMBER]



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