



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3022 of 2019
Date of filing:	26.12.2019
Date of first hearing:	06.02.2020
Date of decision:	20.03.2023

Amit Gupta,
S/o Shri Ram Niwas Gupta,
R/o BD-21, Pitampura,
Delhi - 110034

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.
Office: Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032

....RESPONDENT(S)

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

Present: - Mr. Amit Gupta, complainant through video conference
 Ms. Isha, counsel for the respondent

Dr. Geeta Rathee

ORDER (Dr. GEEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 26.12.2019 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.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of application by original applicant	23.08.2004
4.	Unit area	400 sq. yards (Pg-5 complaint)
5.	Date of builder buyer agreement	Not executed

6.	Total sale consideration	₹14,40,000/-
7.	Amount paid by complainant	₹7,20,000/-
8.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 23.08.2004, Ms. Vandana Nagpal (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 ₹2,25,000/-. Ms. Vandana Nagpal (original applicant) sold the booking rights in favour of Mr. Gulzari Lal Wadhwa who made further payment of ₹4,95,000/- to respondent by the year 2006. Copies of payment receipts have been annexed as Annexure P1 to P3. Thereafter, the booking rights were purchased by present complainant vide agreement to sell dated 21.09.2011 by paying full consideration of ₹7,40,000/- to Mr. Gulzari Lal Wadhwa. Copy of agreement to sell dated 21.09.2011 has been annexed as Annexure P-5. Complainant has pleaded that his predecessors in interest had paid an amount of ₹7,20,000/- to the respondent till date against basic sale price of ₹14,40,000/-.

4. On 05.12.2011 and 06.12.2011, respondent allotted plot no. 566 measuring about 500 sq. yards to complainant's sister Shilpi Gupta. Since then complainant and his sister had requested the respondent vide letters and emails dated 22.12.2011, 30.12.2011, 20.02.2012 for allotment of plot no. 565 in his favour but respondent has not responded to them till date. Copies of said emails and letters have been annexed as Annexure P-8 to P-10.
5. It has come to the notice of complainant that there are grave irregularities in plot allotments against the bookings in the subject project. Complainant has pointed out that Mr. Ved Prakash Bhandari whose booking was done on 06.09.2004 (after the complainant's booking) was allotted plot no. 42 in 2014 but complainant has not been allotted any plot till date. Customer ledger of Mr. Ved Prakash Bhandari issued by respondent is attached as Annexure P-11. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainant in his complaint has sought following reliefs:
- (i) That the respondent be directed to allot plot in Parsvnath City Sonapat against the complainant's booking immediately. If the respondent states unavailability of plots, complaint be allowed to buy the same from the market and respondent be directed to pay the same.

- (ii) That the respondent be directed to compensate the complainant with interest on the paid amount as the Authority deems fit for long delay of 14-15 years in giving plot to the complainant despite the respondent having availability of plot at its disposal.
- (iii) That the respondent be directed to pay penalty to the complainant for superseding the plot allotment rights of the complainant and for committing grave irregularities in plot allotment as the Authority deems fit.
- (iv) That the respondent be directed to pay the litigation cost to the complainant.
- (v) Any other relief as the Authority deems fit may be allowed to the complainant.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 24.01.2020 pleading therein:

7. The present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant does not have any locus standi against the respondent company.
8. On 10.02.2006, Ms. Vandana Nagpal had transferred her nomination, rights and interests in favour of Mr. Gulzari Lal Wadhwa. On 26.06.2006, Mr. Gulzari Lal Wadhwa executed and submitted transfer/endorsement documents thereby promising to abide by the

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terms and conditions of application form and affidavit-cum-undertaking and indemnity submitted with respondent company willingly and voluntarily.

9. Mr. Gulzari Lal Wadhwa had duly agreed that as per clause 7 of affidavit-cum-undertaking and indemnity, if the respondent fails to allot the plot, then the applicant shall accept refund of the amount deposited with the respondent company along with interest @9% per annum from the date of acceptance of our nomination by the company. Copy of affidavit-cum-undertaking and indemnity, nomination form, agreement to sell, affidavit and endorsement letter is annexed as Annexure R-2 with reply.
10. The respondent has admitted that Mr. Gulzari Lal Wadhwa has paid a sum of ₹7,20,000/- till date to respondent company and is applicant of this registration/booking as per the records of the respondent company.
11. The respondent company had planned to develop township in Sonapat upon various pieces of land which was to be acquired from various farmers in Sonapat but a piece of land admeasuring 200 acre has been acquired by the Government therefore, the project got delayed due to force majeure conditions and there is no intentional delay on the part of respondent as the project has been delayed for reasons beyond the control of respondent company.


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12. The complainant has misdirected himself with false and frivolous information in filing above captioned complaint as the reliefs claimed by complainant do not even fall within the realm of jurisdiction of this Authority and are barred by limitation.
13. The complainant never approached the respondent company for transfer in his favour. The registration has been still going on in the favour of Mr. Gulzari Lal Wadhwa in the records of the respondent company and he was to be considered as an allottee of said registration and not the complainant. It has been pleaded that respondent company never made any kind of transaction with the complainant and he should not have any concern about the allotment of the plots specifically to anyone.
14. 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**

15. During oral arguments complainant reiterated his arguments as were submitted in writing. Complainant has also drawn attention of the Authority at page 2 of supporting documents submitted on 17.12.2020 depicting that in the customer ledger of respondent dated 10.09.2011 issued in name of Gulzari Lal, it has been clearly mentioned that plot measuring 400 sq. yards at basic sale price of ₹14,40,000/- in

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'Parsvnath City, Sonipat' has been booked by him. Therefore he argued that name of the project was specified by respondent however, specific plot was never allotted. 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.

16. Learned counsel for the respondent reiterated the arguments as were submitted in writing. She further argued that the booking made by Mr. Gulzari Lal Wadhwa was mere an advance registration and no allotment was ever made in his favour or in favour of complainant. Furthermore, 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 his predecessor and shall accept refund of the amount deposited by him.

F. ISSUES FOR ADJUDICATION

17. 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?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

18. Case was heard at length on 04.02.2021 and after going through record Authority had passed detailed order whereby respondent was directed to transfer the booking of the plot in favour of the complainant within thirty days. Operative part of order dated 04.02.2021 is reproduced below for reference:

“4. Arguments of complainant proving that he is valid allottee of the project have been heard. At the very outset, complainant had argued that all the documents required for transfer of allotment were made available by him except one which required him to execute an ‘affidavit cum undertaking and indemnity’. He was not willing to execute said affidavit and for said reason respondent did not accept the other documents submitted by him and refused to transfer the allotment in his favour. He argued that he has paid a sum of ₹7,40,000/- to Gulzari Lal Wadhwa and this fact is apparent from his bank account statement.

5. After hearing the contentions of the complainant and going through the available record, Authority finds that the complainant, Amit Gupta has executed an agreement to sell dated 21.09.2011 for sale of plot with Gulzari Lal Wadhwa and has paid an amount of ₹7,40,000/- as consideration for the same. He has drawn attention of the Authority towards his account statement placed at page- 19 of complaint paperbook proving that a sum of ₹7,40,000/- had been transferred from his bank account to Gulzari Lal Wadhwa. He has further placed reliance towards check list given by respondent required for transfer of bookings placed at page 29 of the supporting documents submitted on 17.12.2020. Complainant had in his possession the documents required for transfer of booking in his favour, however the same could not be done due to non-execution of affidavit cum undertaking. Mere fact, that complainant’s name does not appear in respondent’s record will not ipso facto mean that complainant is not a valid allottee. Since, an agreement to sell has been executed between the complainant and Gulzari Lal Wadhwa and consideration of ₹7,40,000/- has been proved to be paid to Gulzari Lal Wadhwa



for purchase of plot, Authority is of the considered opinion that Amit Gupta, is a valid allottee in the respondent's project. He has therefore stepped into the shoes of previous allottee and will have all the rights and liabilities of the previous allottee. Resultant thereby, booking of the plot deserves to be transferred in favour of the complainant. Therefore, respondent is directed to transfer the booking of the plot in favour of the complainant within thirty days. If the respondent has any objection in this regard, he may file the same atleast fifteen days before the next date of hearing failing which this order will stand confirmed on next date.

6. Case is adjourned to 04.03.2021."

19. The case was again heard on 03.08.2021. Operative part of order dated 03.08.2021 is reproduced below:

"2. Learned counsel of the respondent states that said order could not be complied with for the reason that the complainant did not submit certain documents required for transferring the booking of plot in his favour. On the other hand, complainant states that all the requisite documents were supplied to respondent through speed post except one which required him to execute an 'affidavit cum undertaking and indemnity'. He states that he should not be forced to sign any additional affidavit for transferring the booking of plot in his favour.

To this, learned counsel for the respondent argues that the complainant has stepped into the shoes of his predecessor Mr. Gulzari Lal Wadhwa who has already executed said 'affidavit cum undertaking and indemnity' placed at page 16 of reply submitted by respondent. No additional affidavit is being asked from the complainant. She further states that complainant will be bound by terms and conditions of documents executed between his predecessor and respondent and as per Clause 7 of affidavit cum undertaking and indemnity given by Gulzari Lal Wadhwa, if no plot is allotted to him, he shall accept refund of the deposited amount along with simple interest @9% p.a.

3. In view of above, reiterating its order dated 04.02.2021, Authority observes that it has been established that complainant is an allottee of the project and will have all the rights and liabilities of the previous allottee. His rights will be not be affected merely because his name is not substituted in



place of his predecessor Gulzari Lal Wadhwa. Further, since complainant has stepped into the shoes of his predecessor wilfully after being fully aware of undertaking given by his predecessor now he cannot refuse to give the same. So, he is directed to submit all the required documents along with affidavit cum undertaking with the respondent who shall substitute his name in place of Gulzari Lal Wadhwa and transfer the booking of the plot in favour of the complainant.”

20. In compliance of orders dated 04.02.2021 and 03.08.2021, complainant's name was substituted in place of his predecessor-in-interest Mr. Gulzari Lal Wadhwa and booking of the plot was transferred in his favour during the course of subsequent hearings.
21. The Authority has heard the arguments of both the parties, and after perusal of record it is observed that the only issue which requires adjudication is with regard to handing over of possession of the plot along with interest as claimed by complainant. In this regard it is observed that complainant has booked plot in present and future project of respondent in 'Parsvnath City, Sonapat', 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 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 complaint is 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.**

22. 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.”

23. 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.
24. 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 recurring and the ground that complaint is barred by limitation stands rejected
25. Complainant is also seeking relief that penalty be paid to him by respondent for superseding the plot allotment rights of the complainant and for committing grave irregularities in plot allotment along with 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.

H. DIRECTIONS OF THE AUTHORITY

26. 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:

- (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.


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- (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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27. **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]

