



**ORDER (NADIM AKHTAR - MEMBER)**

1. Present complaint dated 27.09.2022 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	12.02.2005
3.	Unit area	400 sq. yards (Pg-14 complaint)
4.	Date of endorsement in favour of complainant	14.03.2019
5.	Date of allotment	Not made



6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹22,00,000/-
8.	Amount paid by complainant	₹11,00,000/-
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 February 2005, Mr. Narender Kumar (father of complainant) 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 ₹5,55,000/-. On 04.01.2006, Late Mr. Narender Kumar received a letter from the respondent promising that the respondent will be offering him residential plot in the abovementioned township in Sonapat in a short period of time and in order to enable his name in the priority allotment, he needs to further make a payment of ₹5,50,000/- by 19.01.2006. Thereafter made payment of ₹5,55,000/- to respondent on 18.01.2006. Meaning thereby a sum of ₹11,00,000/- was paid by Mr. Narender Kumar by the year 2006. Copies of payment receipts have been annexed as Annexure P-1 and P-3.



4. That, since the date of booking of the plot, complainant regularly visited the project site, met officials of respondent company but they all gave false assurances of allotment of plot.
5. That, Mr. Narender Kumar, father of the present complainant expired and died intestate on 03.01.2016 and therefore his son- Ankit Gupta, the complainant herein was endorsed/substituted as the allottee/owner of the subject matter plot alongwith all rights, upon fulfilling necessary formalities. Upon further default in allotment of plot and handing over of possession, complainant was constrained to address a letter dated 06.01.2020 to respondent asking for allotment of plot but in vain.
6. The respondent has committed gross default in fulfillment of its promises made to complainant/his father and violated the provisions of RERA Act and has been using complainant's money for more than 16 years in violation of RERA Act. 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 16 years from date of booking. Hence, present complaint has been filed.

**C. RELIEF SOUGHT**

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



- (i) Direction to the respondent to allot and hand over the possession of a plot of 400 sq. yards in its Parsvnath City, Sonapat, at the earliest, preferably within a period of 1 month to the complainant.
- (ii) Direction to the respondent to pay to the complainant interest on the amounts paid from the date of payment till the date of possession of plot as per the RERA Rule 15 with the prevailing applicable State Bank of India Highest Marginal Cost of Lending Rate plus two percent i.e 10%.
- (iii) Levy a penalty of 5% of the estimated cost of the real estate project on respondent for breach of its obligations to deliver possession on time under the RERA Act.
- (iv) If the respondent is not able to allot a 400 sq. yards plots as prayed for, then in the alternative but without prejudice to prayers above, direction to the respondent to return the amounts paid with interest from the date of payment till the date of possession of plot as per the RERA Rule 15 with the prevailing applicable State Bank of India Highest Marginal Cost of Lending Rate plus two percent i.e. 10%.
- (v) Any other order as this Authority may deem fit and proper in the interest of justice.



**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 15.12.2022 pleading therein:-

8. 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.
9. 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.
10. 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.
11. 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.

12. That, on 12.02.2005, Mr. Narender Kumar (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹5,55,000/- towards the registration.
13. 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 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.”

A copy of the application form dated 12.02.2005 signed by the original applicant is annexed with reply as Annexure R-1.

14. That, on 09.10.2019, the registration was transferred in favour of Mr. Ankit Gupta (the complainant) after the death of the original applicant.
15. That, the respondent had received an amount of ₹11,55,000/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-2.



16. That, it is a matter of record that the respondent had not demanded any amount from the complainant after 2006 which establishes the fact the no project was allotted to the original applicant or to the complainant and registration was merely an expression of interest.
17. That at the time of endorsement in favour of the complainant, neither the complainant nor his predecessor-in-interest raised any demand for refund. The respondent made it very clear that there was no allotment in favour of the original applicant which was never objected by the complainant.
18. 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.
19. 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 neither any allotment nor any agreement to sale which can be adjudicated by this Authority.
20. 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.





21. 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.
22. 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**

23. 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.
24. 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 application form 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, wherein Hon'ble High Court has directed the respondent to deposit the amount paid by the complainants along with interest, so outcome of those appeals may be awaited.

**F. ISSUES FOR ADJUDICATION**

25. 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**

26. 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 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.”

**“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,



it is revealed that original applicant (who was father of the complainant) had paid a sum of ₹5,55,000/- for purchasing a plot measuring 400 sq. yards in present and future 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 him with 10% interest per annum. Further, the respondent vide letter 04.01.2006, informed Late Mr. Narender Kumar that in order to enable his name in the priority allotment, he needs to further make a payment of ₹5,50,000/- by 19.01.2006. The original allottee made payment of ₹5,50,000/- by cheque no. 169429 on 18.01.2006. 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 which clearly shows that respondent had recognised the original applicant as his allottee. Thereafter, on demise of original applicant, complainant's name was endorsed/substituted by the respondent on 14.03.2019 whereby it was acknowledged by the promoter that he has accepted the complainant as the allottee against the unit booked by the original allottee.

27. 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 for a "particular/specific unit" was not issued to original allottee does not mean that he was not an allottee of the respondent. Once respondent has accepted the application form and certain amount 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 him 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. 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 present or future project developed by respondent in 'Parsvnath City, Sonapat'. It is natural that in a situation where promoter agreed in the application form to give a plot in a "future project", it would not have been possible to mention a specific no. of the plot in the application form itself. 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". 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, who is the son of the original allottee, 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.

28. Another objection of respondent that case is not similar to "Nishant Bansal versus parsvnath Developers Ltd." 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.

29. 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 continues till date and the ground that complaint is barred by limitation stands rejected.
30. 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 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.**

31. 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

had



and legal expenses by way of filing separate complaints before the learned Adjudicating Officer.”

32. 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.
33. Complainant is also seeking relief that penalty of 5% of the estimated cost of the real estate project be levied on respondent for breach of its obligations to deliver the possession on time. In this regard it is observed that this relief has nowhere been claimed by complainant in his pleadings nor pressed by him during arguments. Hence, complainant’s prayer to levy a penalty of 5% of the estimated cost of the real estate project cannot be allowed. In case the complainant wish to claim this relief, he is at liberty to file a fresh complaint with regard to this particular relief.

#### **H. DIRECTIONS OF THE AUTHORITY**

34. Hence, in consonance with the orders of Hon’ble Appellate Tribunal dated 31.10.2022 in ‘Appeal No. 327 of 2020’, the Authority hereby passes this order and issues following directions under Section 37 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 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.

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



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



.....  
**NADIM AKHTAR**  
**[MEMBER]**