



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1417 of 2021
Date of filing:	22.12.2021
Date of first hearing:	08.02.2022
Date of decision:	20.03.2023

Harbinder Singh Kapany,
R/o 103, The Mall, Ambala Cantt

....COMPLAINANT(S)

VERSUS

1. Parsvnath Developers Ltd.
Regd. Office: G-2, Ground Floor, Arunachal, 19,
Barakhamba Road, New Delhi – 110001
2. Mohan Property Dealer
R/o Old DC Road, Near Bhagat Hospital,
Sonipat

....RESPONDENT(S)

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

Present: - Mr. Akshat Mittal, counsel for the complainant
 Ms. Isha, counsel for the respondent no. 1 through
 None for respondent no. 2

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 22.12.2021 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, Sonepat
2.	Date of application by original applicant	15.06.2004
3.	Unit area	500 sq. yards (Pg-12 complaint)
4.	Date of endorsement in favour of complainant	07.10.2006
5.	Date of builder buyer agreement	Not executed



6.	Total sale consideration	₹17,50,000/-
7.	Amount paid by complainant	₹10,25,626/- (as per complainant) ₹8,75,626/- (as per respondent)
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 in June 2004, Mr. S.C. Bhargava (original applicant) booked a plot measuring 500 sq. yards @₹3500/- per 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 ₹2,75,000/-. Thereafter, said Mr. S.C. Bhargava transferred the booking in favour of present complainant in later part of the year 2004. Complainant requested the respondent no.1 to transfer the plot booking in his name however, respondent no.1 declined the request and agreed to transfer/endorse booking in the name of the complainant subject to deposit of atleast fifty percent of the amount towards the sale consideration qua the plot. Thereupon, the endorsement was made in his favour on 07.10.2006. Original applicant had also made a payment of ₹6,00,626/- to respondent on 09.02.2006. Subsequently, complainant had made further payment of ₹1,50,000/- vide cash to respondent no.2, real estate agent towards the plot, to be



paid to respondent no.1. However, no receipt/acknowledgment has ever been issued by respondent no. 1 qua the same. Till date a sum of ₹10,25,636/- stands paid to the respondent against total sale consideration of ₹ 17,50,000/-. Complainant has annexed copies of payment receipts as Annexure-C1 and C-2.

4. That respondent no.1 miserably failed to allot and offer the possession of the plot in question to the complainant even after more than 17 and half years of booking nor any builder buyer agreement has been signed between the parties.
5. That respondent had orally assured that possession would be given within three years of the booking but same has not been given till date. As per observation of Hon'ble Apex Court in 2018 STPL 4215 tilted M/s Fortune Infrastructure (now known as M/ Hicon Infrastructure) & Anr., three years has been taken to be reasonable time to hand over the possession to the allottee. As such, the respondent was duty bound to offer possession to the complainant latest within three years of booking i.e. latest by 14.06.2007.
6. That complainant had made several telephonic calls to respondent but all in vain as no information regarding allotment and the status of the project was shared with the complainant. Complainant had even sent various emails dated 01.07.2012, 06.02.2013, 26.02.2013 and



04.06.2020 requesting the respondent to allot the plot. Copies of said emails are annexed as Annexure C-5 (colly).

7. 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

8. The complainant in his complaint has sought following reliefs:
- (i) To direct the respondent no.1 to immediately allot hand over the physical possession of the plot to the complainant.
 - (ii) To direct the respondent no. 1 to compensate the complainant for the continuing delay in offer of possession of the plot, by paying interest as prescribed under the Real Estate (Regulation And Development) Act 2016 read with Haryana Real Estate (Regulation and Development) Rules, on the entire deposited amount which has been deposited against the plot in question so booked by the complainant.
 - (iii) To direct the respondent no.1 to pay an adequate compensatory interest on the entire deposited amount for not allotting a particular plot and for not offering the possession thereof, as deemed fit by the Authority.



- (iv) To direct the respondent no.1 to pay a sum of ₹50 lac on account of acute frustration, leading to extreme mental, financial, emotional harassment to the complainant.
- (v) The registration, if any, granted to the respondent for the project namely, "Parsvnath City" situated in the revenue estates of Sonapat, Haryana, under RERA read with relevant rules may kindly be revoked under section 7 of the RERA for violating the provisions of the Act.
- (vi) The complaint may be allowed with costs and litigation expenses of ₹1,50,000/-.
- (vii) Any other relief as this Hon'ble Authority deem fit and appropriate in the facts and circumstances of the instant complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent no.1 filed detailed reply on 07.02.2022 pleading therein:

- 9. 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.
- 10. That, there is no 'Agreement to Sell' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.



11. 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.
12. That the present complaint is barred by limitation.
13. That, on 15.06.2004, Mr. S.C. Bhargava (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹2,75,000/- towards the registration.
14. 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 15.06.2004 signed by the original applicant is annexed with reply as Annexure R-1.

15. That, on 07.10.2006, Mr. S.C. Bhargava transferred/endorsed his rights/interest and liabilities in favour of present complainant. A copy of endorsement letter dated 07.10.2006 is annexed as Annexure R-2.



16. That, on 10.02.2006, 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, he shall accept refund of the deposited amount with 9% simple interest per annum. For ease of appreciation CLAUSE 7 of the undertaking is reproduced hereunder:

"That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest @ 9 % per annum from the date of acceptance of our nomination by the Company."

A copy of affidavit-cum-undertaking and indemnity is attached as Annexure R-3.

17. That, the respondent had received an amount of ₹8,75,626/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-4.
18. That, it is a matter of record that the respondent had not demanded any amount from 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.



19. 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.
20. 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.
21. 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.
22. 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.
23. 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**

24. 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.
25. Learned counsel for the respondent no.1 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 affidavit-cum-undertaking and indemnity 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, so outcome of those appeals may be awaited.

F. ISSUES FOR ADJUDICATION

26. 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

27. 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 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, 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 ₹2,75,000/- for purchasing a plot measuring 500 sq. yards @₹3500/- per 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 him with 10% interest per annum. 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 the plot was transferred in the name of present complainant and endorsement in his favour was made on 07.10.2006 whereby it was acknowledged by the promoter that he has accepted the complainant as the allottee against the unit booked by the original allottee.

28. If argument of respondent is accepted that there was no “agreement for sale” between the parties, it would imply that respondent, who is conducting 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. 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. The agreement may be in any form/mode. Accepting the payment towards a unit in present and future project already shows that there was a meeting of minds on the point that the promoter will give possession of plot in any present or future project at Sonapat 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 shows that original allottee booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot' at Sonapat. 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 in this case after endorsement in his favour stepped into the shoes of the original/erstwhile allottee and 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.

29. 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.
30. 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 500 sq. yards in its project, the cause of action continues till date and as such the ground that complaint is barred by limitation stands rejected.
31. 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.**

32. 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.”

33. 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.
34. Complainant in his complaint has submitted that he has paid a sum of ₹10,25,626/- to the respondent whereas respondent has only admitted payment of ₹8,75,626/-. In this regard it is observed that as per complainant, he has paid a sum of ₹1,50,000/- to real estate agent of respondent but respondent has not issued any receipt for the same. The receipt attached by complainant as AnnexureC-3 does not hold signatures of any authorized person of respondent. So, based on evidence available on record, it couldn't be proved by complainant that sum of ₹1,50,000/- was paid by complainant to respondent or his authorized agent. Hence, it is observed that for the purpose of



calculating interest, the proved/undisputed amount of ₹8,75,626/- shall be taken into consideration and accordingly he will be given delayed interest on sum of ₹8,75,626/-.

35. Complainant is also seeking compensation on account acute frustration, leading to extreme mental, financial, emotional harassment to the complainant 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.
36. Complainant is also seeking relief that registration, if any, granted to respondent for project namely "Sonepat Project" may be revoked. In this regard it is observed that this relief has nowhere been claimed by complainants in his pleadings nor pressed by him during arguments.



Hence, complainant's prayer to revoke the registration of project of respondent cannot be allowed. However, the complainant is at liberty to file a fresh complaint, if so desire, with respect to issue relating to revocation of registration granted.

H. DIRECTIONS OF THE AUTHORITY

37. 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 no.1 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 no. 1 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.

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



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



.....
NADIM AKHTAR
[MEMBER]