



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1578 of 2022
Date of filing:	08.07.2022
Date of first hearing:	22.09.2022
Date of decision:	09.02.2023

Kiran and Vijainder Singh
R/o House no. 125/21, Raj Nagar, Gali no.1,
Khandsa Road, Near Anaj Mandi,
Gurugram Haryana.

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd. through its Managing Director
Office: Parsvnath Metro Tower, Near Shahdara Metro Station,
Shahdara, Delhi- 110032 and Corporate Office at 6th Floor,
Arunachal Building, 19, Barakhamba Road,
New Delhi- 110001

....RESPONDENT(S)

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

Present: Mr. Dhruv Lamba, counsel for the complainant through
 video conference

 Ms. Rupali S. Verma, counsel for the respondent through
 video conference

Geeta Rathee

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 08.07.2022 has 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.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:-

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Elite Floors, Parsvnath City, Dharuhera, Rewari'
2.	RERA registered/not registered	Un-registered
3.	DTCP License no.	129 to 138 of 2007 dated 03.03.2007
	Licensed area	112.956 Acres
4.	Date of application by complainants	06.08.2009
5.	Unit no.	B-115-G

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6	Unit area	1220 sq. ft.
7.	Date of allotment	08.09.2009
8.	Date of builder buyer agreement	23.09.2009
9.	Deemed date of possession	05.02.2012 (Page 9 of complaint)
10.	Basic sale price	₹17,51,310/-
11.	Amount paid by complainants	₹5,70,193/-
12.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 06.08.2009 floor/apartment no. B-115-G, admeasuring 1220 sq.ft. was booked by complainants in a project named 'Parsvnath Elite Floors, Parsvnath City, Dharuhera, Rewari' being developed by respondent. Builder Buyer agreement was executed between the parties on 23.09.2009. A copy of original builder buyer agreement has been annexed as Annexure P-4 with the complaint.
4. Basic sale price of apartment was ₹17,51,310/-. In accordance with the payment plan, complainants by the year 2010 had paid a total amount of ₹5,70,193/-.
5. As per clause 9(a) of builder buyer agreement construction of flat was to be completed within 24 months from the date of commencement of construction on individual plot on which flat is located with grace period of

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6 months but respondent has failed to do so till date. Complainants visited the project site and local office of respondent to know the progress on construction of the unit, but all went in vain as respondent had not even started the construction. On 10.01.2022, complainants again visited the site of project and were shocked to see that respondent had abandoned the project at the initial stage. Complainants had come to know that there is no scope of handing over of possession of flat in question in near future as development of area on project site is very limited. It has been alleged by complainants that the construction of the project is still pending and development of the project is into doldrums and project is far from completion. No offer of possession has been made despite lapse of more than 13 years from date of booking. Complainants want to withdraw from the project as respondent has not fulfilled its obligation under Sections 1, 11(4) and 19(4) of the REA Act of 206 and hence present complaint has been filed.

C. RELIEF SOUGHT

6. The complainants in their complaint have prayed following reliefs:-
- (i) To get refund of the paid money along with prescribed interest from the date of payment till the date of refund (as per section 11(4), 12, 18 and 19(4) of the Real Estate (Regulation and Development) Act 2016 and HARERA Rules and Regulations.

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- (ii) The complainants are also entitled to any other relief to which they are found entitled by this Hon'ble Authority.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

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

7. That, the present complaint pertains to un-registered project of the respondent therefore, in view of the latest judgment by Hon'ble Supreme Court in the case '*Newtech Promoters and Developers Pvt. Ltd. Versus state of U.P. and others*' (2021) SCC Online SC 1044, this Hon'ble Authority would not have the jurisdiction to entertain the present complaint filed under the Real Estate (Regulation and Development) Act, 2016.
8. 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 sthe 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.

9. That, present complaint is liable to be dismissed as flat buyer agreement was executed in the year 2009 before the Real Estate (Regulation & Development Act), 2016 came into force. Therefore, provisions of RERA Act are inapplicable to present agreement as RERA Act cannot be said to have retrospective application and impose limits retrospective.
10. Respondent in his reply has admitted the fact of booking of apartment, the agreed sales consideration, the area and location of the apartment as well as the payment of ₹6,76,689/- made by the complainant. Respondent has however called complainant a chronic defaulter in making timely payments despite issuance of various reminders.
11. It has been contended that the project is being developed in terms of statutory permissions and approvals granted by competent authorities. The respondent has further submitted that in the year 2007, respondent has been granted license of the project bearing no. 129 to 138 of 2007 for construction of residential colony on an area measuring 112.956 acres which was valid upto 02.03.2016. It has been submitted that basic facilities and amenities like roads, electricity, water, sewage, storm water etc. are duly available at site and respondent has already obtained all the necessary approvals from the competent authorities. Further, OHSR & 2 nos. of tubewells; septic tank and STP has already been arranged for the allottees


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- who have been residing. Respondent had already applied for the application of renewal of license which was still pending before the DTCP, Haryana. On 25.05.2016, Office of Senior Town Planner (STP), Gurgaon had confirmed to DTCP, Haryana that all the development works of the project site as per approved layout plan are complete. On 21.02.2021, inspection visit at project site was conducted by learned CTP, HRERA, Panchkula and the observations noted by learned CTP were submitted to Hon'ble Authority.
12. That, issue of valid license being raised by complainant is not tenable as on 28.03.2011 vide memo. No. ZP-110-/JD(BS)/2011/3797-3830 DTCP has directed all the Senior Town Planners in the state that, "building plans/occupation certificate for individual plot holders in the licensed colonies should not be linked with renewal/validity of a license." And the complainant being an individual plot holder had extensive right to construct his own plot irrespective of the fact of renewal of license.
13. Respondent is trying to complete the project for which purpose they have applied for registration with RERA. It has been submitted that respondent has duly complied with the payment of dues and is in the process of availing relief policy for depositing the outstanding EDC. Further it has been contended that time is not essence of the contract and that there is no intentional delay on his part rather project has been delayed for the reasons beyond his control. Respondent company is putting his best

endeavours to streamline and complete the project and if relief sought by complainants is allowed at this stage, it will not only hamper the project but will also harm the interest of other allottees.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

14. During oral arguments, both learned counsel for the parties reiterated arguments as were submitted in writing. Learned counsel for the complainants argued that there has been delay of approximately 13 years from the date of booking but respondent has failed to fulfill its obligations and hand over the possession of the flat to the complainants. So, refund may be allowed in their favor along with interest.

On the other hand, learned counsel for respondent further stated that basic infrastructure and facilities have already been developed at site and number of families have been residing happily. Therefore, this is not an abandoned project. Respondent is trying to complete the remaining project and make offer of possession of units to allottees. She further stated that allowing refund at this stage will hamper progress of the project.

F. JURISDICTION OF THE AUTHORITY

15. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F.1 Territorial Jurisdiction

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Rewari district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

F.2 Subject Matter Jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

16. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

17. The respondent has taken a plea that Authority has no jurisdiction to hear the present complaint as it pertains to un-registered project of the respondent. Said plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in complaint case no. 191 of 2020 titled '*Mrs. Rajni & Mr. Ranbir Singh versus M/s Parsvnath Developers Ltd.*' and same is followed in present cases as well.
18. One of the averments of respondents is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. Accordingly, respondents have argued that

relationship of builder and buyer in this case will be regulated by the agreement previously executed between them and same cannot be examined under the provisions of RERA Act. In this regard Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable.”

Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller. "

In the instant case, however, relief of refund has been sought. The refund in this case is admissible because respondents have failed to complete the real estate project and handover the possession of the same within the time stipulated in the agreement for sale. As on date, the complainants are aggrieved persons who have not been handed over possession of the flat as per agreement of sale. The cause of action, i.e., handing over of possession still persists even after the RERA Act, 2016 coming into force. This is a case of breach of contract by the respondents. In the case of breach of contract, argument that provisions of RERA Act, 2016 will not apply to the agreements executed prior to coming into force of the Act cannot be applied at all. Provisions of the agreement are to be considered if the agreement was to be acted upon. Here is a case of breach of contract, therefore, equities have to be settled so as to compensate a person who is a sufferer on account of breach of contract. The general law of the land will regulate such situation and not provision of the agreement.

19. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:-

A handwritten signature in blue ink, appearing to read 'J. P. Sathee', is written over a horizontal line.

(i) The license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. Booking of the apartments have been done from the year 2006 onwards. As per the information received from project branch of this Authority, this project of the respondent is in a serious difficulty. They have applied for registration of project with RERA being an ongoing project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken place for the last over six years. In its project jurisdiction, this Authority has passed following order dated 22.03.2021:

“1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.

2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent company may obtain a copy of the report from the registry of the Authority if they so desire.

3. Opening the arguments Shri Shekhar Verma, Advocate, learned counsel for the promoter-developers reiterated that upon filing of an application

for registration the Authority is duty bound to register the project. In support of his contentions he drew the attention of the Authority towards provisions of Section 5 of the RERA Act, 2016 and stated that as per law, the Authority is duty bound to either register the project within a period of 30 days or reject the application for reasons to be recorded after giving an opportunity to be heard to the promoter. Further, if the Authority fails to grant registration or to reject the application within a period of 30 days, the project shall be deemed to have been registered.

4. The Authority does not agree with the contentions of the learned counsel Shri Shekhar Verma for the reasons that the Authority is not duty bound to register the project of a promoter who is defaulter on multiple counts and whose license has not been renewed by the Town & Country Planning Department. Further, if the promoter has failed to complete the project for more than a decade and no construction work is taking place for past 7-8 years, and more importantly there is no hope for scope for its recommencement in near future, the Authority cannot register such a project. Registration of a project implies that the Authority has satisfied itself about credentials of a promoter and it is satisfied that the project will be completed within the stipulated time frame. Registration of a project by the Authority is an assurance to all future allottees and investors that the Authority will ensure that their money is safe and the project will be completed in time. In this case the promoters have yet to pay 127 crores EDC to the State Government which they are failing to pay last many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arrange by the promoters for recommencing the construction activities.

Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these

reasons, it cannot and should not register the project at this stage.

6. The Authority after consideration is of the view of the facts of the matter that application filed by the promoters is liable to be rejected. In the event of the application being rejected, alternate options of handing over of the project to the association of allottees can be explored. However, before resorting to this option one last opportunity is granted to the promoters to arrange funds for recommencing of the project construction and also submit monthly plan for its execution. If by the next date adequate funds for commencing construction work are not put in the escrow account and a plan of action for completion of the project is not submitted, the Authority will be constrained to issue a show cause notice for rejection of the application.

7. Adjourned to 03.05.2021.”

(ii) Authority has offered numerous opportunities to respondent to commence development works of the project. Repeated directions have been issued to it to deposit some money in the Escrow Account but respondent have failed to comply with any of the orders. Respondent have been making repeated assurances but have been failing to keep them.

(iii) Further, fact of the matter is that due date of offering possession was 2012. Already there has been a delay of more than 11 years in offering possession to the complainants. After such inordinate delay, innocent allottees who have invested their hard earned money cannot be made to wait endlessly for grant of possession. In this case development/construction is not taking

place at all, nor is there any plan of action for commencing it. On account of multiple defaults on the part of respondent, Authority has not even registered the project.

Further, Hon'ble Supreme Court in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of

the paid amount along with interest on account of delayed delivery of possession.

20. This project is already delayed by several years. It is still not complete and admittedly respondent is not in a position to complete the project in foreseeable future, therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

21. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of

interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

22. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 09.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.
23. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid by him till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹5,70,193/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and

Development) Rules, 2017 i.e at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.60% (8.60% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest at the rate of 10.60% till the date of this order and said amount works out to ₹13,71,807/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 09.02.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹1,75,131/-	06.08.2009	₹2,51,045/-	₹4,26,176/-
2.	₹1,75,131/-	22.09.2009	₹2,48,654/-	₹4,23,785/-
3.	₹1,75,131/-	03.03.2010	₹2,40,415/-	₹4,15,546/-
4.	₹44,800/-	03.03.2010	₹61,500/-	₹1,06,300/-
Total	₹5,70,193/-		₹8,01,614/-	₹13,71,807/-

I. DIRECTIONS OF THE AUTHORITY

24. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹13,71,807/- to the complainants.

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(ii) 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.

25. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



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NADIM AKHTAR
[MEMBER]



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