



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Date of final order: 08.02.2023

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

Sr. No.	Complaint No.	Complainant
1.	2942 of 2022	Sushil Kumar Agrawal S/o Sh. L.R. Aggarwal, R/o M-285, Greater Kailash, Part-11, 2 nd floor, New Delhi
2.	2943 of 2022	Sushil Kumar Agrawal S/o Sh. L.R. Aggarwal, R/o M-285, Greater Kailash, Part-11, 2 nd floor, New Delhi

VERSUS

Parsvnath Developers Ltd. through its Chairman/Managing Director
Office: G-2, Ground Floor,
Arunachal Building, 19, Barakhamba Road,
New Delhi- 110001

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

G. Rathee

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

Ms. Isha, counsel for the respondent through video conference (in both complaints)

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaints dated 23.11.2022 have been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of both the complaints are identical and relate to the same project of the respondent, i.e., "Parsvnath City, Sonapat". Therefore, Authority by passing a common order shall dispose of all captioned complaints. Complaint No. 2942 of 2022 titled Sushil Kumar Agrawal versus Parsvnath Developers Ltd. has been taken as lead case for disposal of both matters.

A. UNIT AND PROJECT RELATED DETAILS

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

(i) Complaint no. 2942 of 2022

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Parsvnath City, Sonapat
2.	Date of application by complainant	20.09.2004
3.	Unit area	500 sq. yards (Pg-2 complaint)
4.	Date of allotment	Allotment not made
5.	Date of builder buyer agreement	Not executed
6.	Total sale consideration	₹20,00,000/-
7.	Amount paid by complainant	₹10,00,000/-
8.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

4. Facts of complainant's case are that on 20.09.2004, complainant booked a plot measuring 500 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/- to the respondent. Copy of payment receipt has been annexed as Annexure C-1.

5. That, further amount of installments was payable only after allotment, but the respondent demanded the installment which was not due at all. Hence, under compelling circumstances, the complainant deposited payment of ₹7,25,000/- on 27.12.2005 in favour of the respondent. Copy of payment receipt has been annexed as Annexure C-2. Therefore, a sum of ₹10,00,000/- has been paid to the respondent till date.
6. That the complainant had filed complaint under Consumer Protection Act before Hon'ble NCDRC, New Delhi but complainant was not willing to proceed with the same and hence the same was dismissed in default vide order dated 18.08.2022.
7. That till date the respondent has not allotted the plot to the complainant nor even intimated the development of the project. Even after passing of so many years, the respondent has not completed the project and failed to develop the same as per schedule. Hence, present complaint has been filed.

C. RELIEF SOUGHT

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

- (i) To direct the respondent to refund the amount deposited against the plot in question, along with all statutory compensation/interest/damages.
- (ii) To direct the respondent to pay the amount of loss of housing opportunity which should be circle rate as on date i.e 17,000/- per sq. yards-booking rate.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 16.01.2023 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 and the registration was mere an expression of interest towards the future project of the respondent.
10. 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.
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 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.

13. That, on 20.09.2004, complainant 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, he shall accept the refund of the amount deposited by him. 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 30.07.2004 signed by the original applicant is annexed with reply as Annexure R-1

15. That, perusal of CLAUSE F of the application form would show that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in his favour and he has further given the undertaking that in case no allotment is possible in future, he would accept refund with simple interest at the rate of 10% per annum.
16. That, it is pertinent to mention that the respondent had received an amount of ₹10,00,000/- till date from the complainant. A copy of the latest ledger is annexed as Annexure R-2.
17. That, it is a matter of record that no demand was ever raised by the respondent from the complainant which establishes the fact that there was no project and the registration was merely an expression of interest towards the future project of the respondent.
18. That, it is pertinent to state that in absence of any agreement to sale, the complainant is bound by the terms & conditions of the application form which is duly signed by the complainant.
19. That, the complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before this Hon'ble H-RERA, Panchkula as the relief (s) claimed by the complainant does not even fall within the realm of jurisdiction of this Hon'ble Authority,

Panchkula as there is neither any allotment nor any agreement to sale which can be adjudicated by this Hon'ble 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 as the registration was mere an expression of interest towards the upcoming project of the respondent & purchased the same from open or secondary market.
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.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

25. 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, Authority has gone through the Preamble of RERA Act, 2016 and definition of allottee 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 but at the same time the preamble cannot be used to defeat the

enacting provisions of the Act. The Preamble provides for the protection of interests of the 'consumers' of the real estate sector. Upon careful perusal of all the terms and conditions of application form annexed as Annexure R-1, it is revealed that complainant had paid a sum of ₹2,75,000/- for purchasing a plot measuring 500 sq. yards in next project of respondent and it was agreed between the parties that respondent shall allot a residential plot to complainant and in case he fails to do so for any reason whatsoever, advance money paid by complainant shall be refunded to him with 10% interest per annum. Meaning thereby he is a consumer of respondent.

26. Furthermore, as per the provisions of the Act any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. In the present case, complainant has paid a certain amount to respondent and same has been admitted by respondent in its reply. Mere fact that a builder buyer agreement with regard to "particular/specific unit" was not signed between complainant and respondent, does not mean that there was no agreement between the parties. In this regard, section 2(c) of the RERA Act of 2016 provides that "agreement for sale" means an agreement entered into between the promoter and the allottee. The definition does not restrict the ambit of agreement for sale to the formal/standard document with nomenclature of "builder

buyer agreement booklet". Once respondent has accepted the application form and certain amount from complainant for purchase of a unit in his project and has agreed to sell the plot as per price mentioned in application form, there is an agreement for sale inter-se and therefore it is the duty of respondent promoter to allot complainant a unit within a reasonable time frame. Failure on part of the respondent to do so will not affect the rights of complainant as an allottee. Even an application form which specifies the details of unit booked by complainant will be treated as agreement for selling the property. So, as per documents available on record, clearly shows that complainant has booked a plot in respondent's project and respondent had agreed for 'sale of a plot'. Accordingly, complainant is well within the definition of allottee. Hence, objection of respondent that complaint is not maintainable as there is no agreement for sale and complainant is not an allottee stands rejected.

27. 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:

- (i) That in these complaints booking was made in 'present and future' scheme; no formal builder buyer agreement was signed from where any "due date for handing over of possession" could have been ascertained. However, in case where no

specific due date of possession is provided by the promoter, the Authority considers a period of three years to hand over the possession of the plot/unit. In the present case, the complainant booked the 500 sq. yards plot in the year 2004 in the present and future scheme of the respondent promoter and even after the delay of more than 18 years the complainant has not got the possession of the plot. Complainant in exercise of his rights is interested to withdraw from the project and want refund of the amount deposited; respondent has expressed its inability to offer plot to the complainant and is agreeable to refund the amounts deposited. For these reasons, Authority is of the considered view that an innocent allottee who has invested his hard earned money with the hope to own a plot cannot be made to wait endlessly anymore, given the situation the promoter admitting that it is not in a position to deliver the possession of the plot. Therefore, case is clearly made out to allow relief of refund as sought by complainant. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserve to be granted.

- (ii) 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.”

- (iii) 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.
- (iv) 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. 08.02.2023 is 8.60%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.60%.

(v) 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 complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount 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 in the captioned complaint nos. 2942 of 2022 and 2943 of 2022 the total amount along with interest calculated at the rate of 10.60% till the date of this order as per details given in the table below:

S.No.	Complaint No.	Principal Amount	Interest Accrued till 08.02.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	2942 of 2022	₹10,00,000/-	₹18,52,916/-	₹28,52,916/-
2.	2943 of 2023	₹9,00,000/-	₹16,73,195/-	₹25,73,195/-

(vi) The complainant is seeking compensation in form of amount of loss of housing opportunity. 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 litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

28. Hence, the Authority hereby passes this common order in the captioned ocmplaints 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 ₹28,52,916/- and ₹25,73,195/- to the complainants in complaint no. 2942 of 2022 and 2943 of 2022 respectively.

(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.

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


.....
NADIM AKHTAR
[MEMBER]


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