



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2504 of 2022
Date of filing:	20.09.2022
Date of first hearing:	07.02.2023
Date of decision:	07.02.2023

Kishore Kumar Jain,
S/o Shri Chandanmal Jain,
R/o Villa-6, ATS one Hamlet, Sector 104,
Noida, Gautam Buddha Nagar,
Uttar Pradesh, 201304.

....COMPLAINANT(S)

VERSUS

M/S 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
Nadim Akhtar

Member
Member

Present: -

Mr. Ramesh Malik, counsel for the complainant

Ms. Isha, counsel for the respondent through video conference

Geeta Rathee

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 20.09.2022 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	30.07.2004
3.	Unit area	400 sq. yards (Pg-10 complaint)
4.	Date of allotment	Allotment not made
5.	Date of builder buyer agreement	Not executed

6.	Total sale consideration	₹14,40,000/-
7.	Amount paid by complainant	₹6,98,000/-
8.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 30.07.2004, Mr. Subhash Chand Gupta (original applicant) booked a plot measuring 400 sq. yards in a township named 'Parsvnath City' under 'Present and Future Scheme' launched by respondent company at Sonipat, Haryana. Mr. Subhash Chand Gupta (original applicant) had paid an amount of ₹6,98,000/- to the respondent. Copies of payment receipts have been annexed as Annexure C-2 (colly). Thereafter, present complainant purchased the booking rights from Mr. Subhash Chand Gupta and endorsement in his favour was made on 19.04.2006. Copy of endorsement letter has been annexed as C-3 with the complaint.
4. That, on 28.02.2013 the respondent company wrote a letter to other allottees that they would not be charged any interest on delayed payment against the above mentioned unit till 28.02.2013 and further stated that possession of said plot is expected to be handed over by December, 2013. The complainant on numerous occasions approached the office of respondent-company requesting for actual physical

possession of the plot in question but in vain. Complainant has already paid 50% of the total sale consideration but even after lapse of more than 16 years from the date of booking, the plot has not been demarcated by respondent and respondent has failed to hand over the possession of the plot or even make allotment of the plot to the complainant.

5. Complainant physically inspected the site and it came to his knowledge that there is no scope of handing over possession of residential plot in question as on the project site the development of the area is very limited. It has also come to knowledge of complainant that requisite approvals from the authorities have also not been received by respondent. 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. Respondent is neither in a position or have any intention to offer possession of the plot to the complainant nor returning the already paid EDC against the said plot. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainant in his complaint has sought following reliefs:-

- (i) To direct the respondent company to pay interest on delayed possession for more than 16 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainant;
- (ii) To direct the respondent company refund ₹6,98,000/- along with interest at the rate MCLR plus 2%.
- (iii) To direct the respondent to pay ₹10,00,000/- as part of damages to the complainants on account of mental agony, torture and harassment;
- (iv) Any other relief- remedy which is deemed fit by this Hon'ble Authority in the present facts and legal preposition of the case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.11.2022 pleading therein:-

7. 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.
8. 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.

9. 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.
10. 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.
11. That, on 30.07.2004, Mr. Subhash Chand Gupta (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹2,00,000/- towards the registration.
12. 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 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

13. 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.
14. That, on 19.04.2006, original applicant transferred his interest, rights and liabilities in favour of present complainant. A copy of endorsement letter dated 19.04.2006 is annexed as Annexure R-2.
15. That, on 28.02.2006, 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.

16. That, the complainant had paid ₹6,98,000/- till date to the respondent company. A copy of the latest ledger is annexed as Annexure R-4.
17. That, it is a matter of record that the complainant had not paid any consideration after the endorsement in his favour and neither the respondent has made any demand after 2006. 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.
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 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 of 2016 as the registration was mere an expression of interest towards the upcoming project of the respondent & purchased the same from open or secondary market. No plot buyer agreement was ever executed with the complainant or with his predecessor-in-interest. No EDC charges have been charged from the complainant.
22. That, both the complainant and his predecessor-in-interest were aware about the status of the project while proceeding with their registration and no objections were raised by them. Therefore, the complainant cannot be allowed to raise a belated claim against the respondent at this stage.
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 complainant submitted that complainant is willing to accept refund of the amount deposited by him along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainant, but is ready to refund the amount.

F. ISSUES FOR ADJUDICATION

25. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

26. 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. Further, a bare perusal of the definition of the term "allottee", it is clear that the transferee of an apartment, plot or building who acquired it by "any mode" is an allottee. This may include allotment, sale, transfer, as consideration of service, by exchange of development rights, or by any other similar means. Upon careful perusal of all the terms and conditions of application form annexed as Annexure R-1, it is revealed that original applicant had paid a sum of ₹2,00,000/- for purchasing a plot measuring 400 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.

27. The fact that the respondent had accepted subsequent other payments from 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.

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, was accepting the payments and issuing receipts to predecessors of the complainant for 'nothing in return', which is impossible and hard to believe. Mere fact that 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.

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 shows there was a meeting of minds on the point that the promoter will give possession in any present or future project developed by respondent. 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 allot a specific no. of the plot in the application form itself. Furthermore, there is nothing in the application form 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. Therefore, as per 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 allottee was very much allottee. Further the original allottee transferred his rights by way of an endorsement in favour of the complainant. 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 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. 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 this complaint booking was made in 'present and future' scheme; no agreement has been executed till date; complainant is interested to withdraw from the project and wants refund of the amount deposited; respondent has expressed its inability to offer plot to the complainant and is agreeable to refund the amount deposited. For these reasons, a 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 deserves 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. 07.02.2023 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 of ₹6,98,000/- 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 calculated at the rate of 10.60% till the date of this order and said amount works out to ₹19,88,727/- as per detail given in the table below:


S.No.	Principal Amount	Date of payment	Interest Accrued till 07.02.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹2,00,000/-	30.07.2004	₹3,93,042/-	₹5,93,042/-
2.	₹4,98,000/-	10.02.2006	₹8,97,685/-	₹13,95,685/-
Total	₹6,98,000/-		₹12,90,727/-	₹19,88,727/-

(vi) The complainant is seeking compensation on account of mental agony, torture and harassment. 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

29. 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 ₹19,88,727/- to the complainant.
 - (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.
30. **Disposed of.** File be consigned to record room and order be uploaded on the website of the Authority.


.....
NADIM AKHTAR
[MEMBER]


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