



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2506 of 2022
Date of filing:	20.09.2022
Date of first hearing:	07.02.2023
Date of decision:	07.02.2023

Rakesh Chadha,
S/o Ramesh Chander Chadha,
R/o 6/13 W.E.A, Karol Bagh,
S.O. Central Delhi,
Delhi – 110005.

....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. 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	12.02.2005
3.	Unit area	400 sq. yards (Pg-3 complaint)
4.	Date of endorsement in favour of complainant	12.05.2008
5.	Date of allotment	Not made

6.	Date of builder buyer agreement	Not executed
7.	Total sale consideration	₹14,40,000/-
8.	Amount paid by complainant	₹11,30,000/-
9.	Due date of possession	Cannot be ascertained
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that in February 2005, Mr. Hari Mohan 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. Hari Mohan Gupta (original applicant) had paid an amount of ₹5,50,000/- to the respondent. Copies of payment receipts have been annexed as Annexure C-2 (colly). Thereafter, Mr. Hari Mohan Gupta sold the booking rights to Mr. Nalin Arora who had paid an amount of ₹5,50,000/- to the respondent. Present complainant purchased the booking rights from Mr. Nalin Arora and endorsement in his favour was made on 12.05.2008. 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, respondent has failed to hand over the possession of the plot or even make allotment of the plot to the complainant.

5. Complainant has physically inspected the site and it has come 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. It has been stated that Authority vide its numerous orders has directed respondent to hand over possession of the allotted plots to the similarly situated buyers in complaint no. 723 of 2019 titled Nishant Bansal versus M/s Parsvnath Developers Ltd. who were granted the relief of possession of unit vide order dated 11.03.2020 and

further in vide order dated 13.10.2021 passed in complaint case no. 865 of 2020 titled "Deepak Gupta versus M/s Parsvnath Developers Ltd.", Authority has directed respondent to pay upfront interest and has also been directed to pay monthly interest of the deposited amount. 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 offer actual physical possession of the plot in question in the project of respondents;
 - (ii) To direct the respondent company to obtain license from Haryana Town & Country Planning, Haryana of the project Parsvnath City, Sonipat, Haryana;
 - (iii) To direct the respondent -company to pay interest on delayed possession for more than 15 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainants;
 - (iv) To direct the respondent to pay ₹10,00,000/- as part of damages to the complainants on account of mental agony, torture and harassment;
 - (v) To direct the respondents to pay upfront interest and also monthly interest as per the direction given by this Hon'ble Authority in Complaint No.865 of 2020 titled as Deepak Gupta

Versus M/s Parsvnath Developers Ltd. and other connected
bunch of complaints;

- (vi) 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 13.10.2022
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 12.02.2005, Mr. Hari Mohan Gupta (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the Respondent and paid ₹5,50,000/- 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. The relevant clause of the application form is mentioned here under:-

“(f) Though the company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

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

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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 28.02.2006, Mr. Hari Mohan Gupta transferred his interests, rights and liabilities in favor of Mr. Nalin Arora. On 12.05.2008, Mr. Nalin Arora transferred his interest, rights and liabilities in favour of present complainant. A copy of endorsement letter dated 12.05.2008 is annexed as Annexure R-2.
15. That, on 17.04.2008, 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."

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A copy of Affidavit-Cum-Undertaking and Indemnity is attached as Annexure R-3.

16. That, the respondent had received an amount of ₹11,30,000/- till date towards the advance registration(₹11,00,000/- from predecessors-in-interest of complainant and ₹30,000/- from complainant as administrative charges). 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 2008. 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 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 no relationship between the parties before 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. Complainant is bound with the terms and conditions of affidavit cum undertaking which is duly signed by him.
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. Mr. Ramesh Malik, 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 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.

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, Authority has gone through the Preamble of RERA Act, 2016 and definition of allottee as provided in Section 2(d) of the Act. Said provisions are reproduced below for reference:

"Preamble: An Act to establish the Real Estate Regulatory Authority Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected connected therewith or incidental thereto."

"Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a

statute 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 "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 ₹5,50,000/- 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 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. Thereafter the plot was transferred in the name of subsequent allottee, Mr. Nalin Arora, from whom present complainant had purchased the booking rights and endorsement in his favour was made on 12.05.2008.

28. 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.

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 second allottee – Mr. Nalin Arora, who subsequently transferred his rights in favour of the present allottee i.e. 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.

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. 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 been executed between the parties and complainant is seeking possession of the plot booked by him. It is observed that the factual matrix of present case is similar to bunch of cases with lead case Complaint no. 723 of 2019 titled as "**Nishant Bansal versus Parsvnath Developers Ltd.**" Accordingly, Authority is satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 723 of 2019. Therefore, captioned complaint is disposed of in

terms of the orders passed by the Authority in **Complaint no. 723 of 2019 titled as Nishant Bansal versus Parsvnath Developers Ltd.**

31. It is pertinent to mention here that respondent 'Parsvnath Developers Ltd.' had filed an appeal no. 327 of 2020 before Hon'ble Haryana Real Estate Appellate Tribunal, Chandigarh against order dated 11.03.2020 passed in complaint no. 723 of 2019 which was dismissed by Hon'ble Tribunal vide its order dated 31.10.2022. Operative part of order dated 31.10.2022 is reproduced below:

"24. Though, the learned Authority by way of impugned order had directed the appellant to allot and deliver the possession of the booked plots to the respondents/allottees in the project Parsvnath City, Sonipat, but did not award the interest at the prescribed rate, as stipulated in the proviso to Section 18(1) of the Act, which lays down that where an allottee does not intend to withdraw from the project, he/she shall be paid, by promoter, interest for every month of delay till the handing over of the possession, as such rate as may be prescribed. Accordingly, the respondents/allottees are entitled to the prescribed rate of interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% after a period of three years from the date of deposit of the amount which is a reasonable period for completion of the contract, till the handing over the possession.

25. Alternatively, if the allottees wish to purchase equivalent size plots of their own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonipat, they are at liberty to take refund of the amount paid along with prescribed rate of interest i.e. SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.25% per annum from the date of deposits till realisation and seek compensation of the excess amount paid in such purchase of plots, along with compensation for mental agony, harassment and legal expenses by way of filing separate complaints before the learned Adjudicating Officer."

32. Complainant has also prayed that respondent be directed to obtain license from Haryana Town & Country Planning Department for project in question and has also sought upfront interest and monthly interest as per direction given by this Authority in complaint no. 865 of 2020 titled Deepak Gupta versus M/s Parsvnath Developers Ltd. It is observed that after perusing the facts of the case, the complaint is being disposed of in terms of complaint no. 723 of 2019 wherein the Authority has not awarded upfront interest and monthly interest nor any direction regarding obtaining license has been given, therefore, in the present case also complainant's prayer to direct the respondent to obtain license for the project and to award upfront interest and monthly interest in terms of 865 of 2020 is rejected.

However, complainant will be entitled to interest for delay in handing over the possession as per Rule 15 Haryana Real Estate (Regulation & Development) Rules, 2017 till the handing over of possession as observed by Hon'ble Appellate Tribunal in its order dated 31.10.2022.

33. Complainant is also seeking damages 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 damages and compensation.

H. DIRECTIONS OF THE AUTHORITY

34. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act incorporating the modifications made by Hon'ble Appellate Tribunal 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 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 him. In case, respondent promoter due to non-availability of plots is not able to allot and offer its possession to the complainant concerned, he will be liable to make available to him a plot of the size, as booked, by purchasing it

from open market at his own cost. Respondent promoter however will be entitled to recover from the complainant the balance amount payable by him as per the rate agreed by the parties at the time of booking of plot.

(ii) Respondent is also directed to pay the complainant interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.60% 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 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.

(iv) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of

Haryana Real Estate (Regulation & Development) Rules, 2017

failing which legal consequences would follow.

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



.....
NADIM AKHTAR
[MEMBER]



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

