



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2482 of 2022
Date of filing:	11.10.2022
Date of first hearing:	13.12.2022
Date of decision:	09.08.2023

1. Sh. Rajat P. Deshpande S/o Sh. P.N. Deshpande,
 2. Ms. Neelima P. Deshpande W/o Sh. P.N. Deshpande,
- Both R/o Flat no. 409, Wing 4A, Sobha Quartz,
Green Glen layout, Bellandur,
Bengaluru- 560103

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd.

Office: Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, New Delhi- 110032

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Hearing: 3rd

Present: - Sh. Kuldeep Kumar Kohli Advocate, counsel for complainant

None for the respondent

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint dated 11.10.2022 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 project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the 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 132 and 134 to 138 of 2007 dated 03.03.2007
4.	Date of application by complainant	07.09.2010
5.	Apartment no.	B-037-G



6.	Unite area	1775 sq.ft.
7.	Date of builder buyer agreement	22.10.2010
8.	Deemed date of possession	22.04.2013
8.	Total sale price	₹27,65,712.50/-
9.	Amount paid by complainant	₹5,67,385.91/-
10.	Offer of possession	28.10.2020

B. FACTS OF THE COMPLAINT

3. Facts of complainant's case are that on 22.10.2010, complainants had booked apartment bearing no. B-037-G, admeasuring 1775 sq.ft. in a project named "Parsvnath Elite Floor" situated at Dharuhera, Rewari being developed by respondent promoter. Builder Buyer agreement was executed between the parties on 22.10.2010, copy of same has been annexed as Annexure C-2 with the complaint. Total sale price of apartment was ₹27,65,712.50/- out of which complainant had paid an amount of ₹5,67,385.91/- in the year 2010. Receipts of the paid amounts are annexed as Annexure C-5(colly). As per clause 9(a) of BBA construction of flat was to be completed within 24 months from the date of commencement of construction on the individual plot with with grace period of 6 months. Accordingly, due date comes to 22.04.2013 but respondent has failed to do so till date. Further, in para



11 of the complaint, complainant had alleged that he had never applied for any home loan from LIC Housing Finance Limited, which has been added as one of the parties in the Tripartite agreement.

4. Complainants approached the respondent several times and asked him to complete the project and hand over the possession of the unit but to no avail. Complainants had physically inspected the site and had come to know that there is no scope of handing over of possession of booked apartment in near future. It has been alleged by complainant that the construction of the project is standstill and development of the project is into doldrums and project is far from completion.
5. Complainant in para 18 of the complainant has stated that due to failure on part of respondent, he was left with no option as he had to lodge a criminal complaint with the Station House Officer of Barakhamba Road Police Station, Barakhamba Lane, Rajiv Chowk, New Delhi-110001 dated 13.08.2018. However, no FIR has been registered against respondent till date. Complainant stated that non- completion of project implies that respondent has diverted the funds. After delay of almost more than 13 years from date of booking respondent has miserably failed to deliver the possession of the booked apartment. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainants in this complaint has sought following reliefs:



- (i) To direct the respondent-company to refund the entire paid amount along with interest at prescribed rate of interest till the actual realization of amount.
- (ii) To direct the respondent-company to restrain any fresh demand with respect to the Project.
- (iii) To direct respondent from cancelling the allotment till the time the entire amount paid is refunded to the complainant.
- (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 02.05.2023 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 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.

9. 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 ₹5,67,385.91/- made by the complainants. 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 have already been arranged for the allottees who are residing. Respondent had already applied for the



application of renewal of license which is still pending before the DTCP, Haryana. On 25.05.2016, Office of Senior Town Planner (STP), Gurugram 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.

10. 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.
11. 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 complainant 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

12. During oral arguments complainants have reiterated their arguments as were submitted in writing. On the other hand, none appeared for the respondent.

F. ISSUES FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

14. The respondent has taken a plea that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016. In present case agreement to sell was executed in the year 2010. Accordingly, respondents have argued that RERA Act cannot have retrospective effect and 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 supposed to be 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.

15. Another averments of the respondents is 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.

16. Thirdly, in para 5 of the reply, respondent has raised an objection that captioned complaint is barred by limitation. In this regard, it is observed that since, the promoter has till date failed to fulfil his obligations to hand over the possession of the booked apartment in its project, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected.
17. 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 complainants, Authority observes as follows:
- (i) That the license for development of this project in question was granted to the respondent by the State Government authorities in the year 2007. 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. As per Temp Id, RERA-PKL-



104-2018 in its project Section, 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.*

Further, in the meeting held on 04.10.2021, below orders were passed by the Authority for the respondent promoter in its project Section:

"Since, licenses granted to promoter-applicant are expired since March 2016 and February 2018 and promoter has failed to get them renewed, therefore, Authority decides to adjourn application for registration matter sine die with directions to applicant/promoter to approach the Authority after getting their licenses renewed".

- (ii) Authority has offered numerous opportunities to respondents to commence development works of the project. Repeated directions have been given to them to deposit some money in the Escrow Account but respondents have failed to comply with any of the orders. Respondents have been making repeated assurances but have been failing to keep them.
- (iii) Further fact of the matter is that builder buyer agreement was signed on 22.10.2010 and due date of offering possession was within 24 month from date of construction plus 6 months grace period. After such inordinate delay of almost 13 years from booking, Authority could consider continuation of the allottees in the project only if respondent had commenced its development or an application for grant of occupation certificate was filed. On the contrary, in this case development 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. In fact, a thought process is going on to hand over the project to association of allottees, which in other words mean that Authority considers that respondents will not be able to complete the project at their level.

18. 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 along with interest in favour of complainants. As per Section 18 of Act, interest is defined as under:-

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;



Rule 15 of HRERA Rules, 2017 which is reproduced below for ready reference:

“Rule 15: Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (NCLR) 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”.

19. 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.
20. 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. 09.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.
21. Accordingly, respondent will be liable to pay the complainants interest from the date amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹5,67,385.91/- 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 10.75% (8.75% + 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 10.75% till the date of this order and said amount works out to ₹13,52,307.9/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 09.08.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹2,79,000/-	07.09.2010	₹ 3,87,848/-	₹ 13,52,307.9/-
2.	₹2,88,385.91/-	22.10.2010	₹ 3,97,074/-	
Total	₹5,67,385.90/-		₹ 7,84,922 /-	

H. DIRECTIONS OF THE AUTHORITY

22. 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 ₹13,52,307.9/- to the complainants.
- (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.

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



.....
DR. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]