



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>2246 of 2022</b>
<b>Date of filing:</b>	<b>29.08.2022</b>
<b>Date of first hearing:</b>	<b>19.10.2022</b>
<b>Date of decision:</b>	<b>05.07.2023</b>

1. Vikas Goel S/o Sh. Ganesh Dayal
2. Nandini Goel W/o Sh. Vikas Goel,  
Both R/o 238-F, MIG DDA Flats,  
Rajouri Garden,  
New Delhi- 110027

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

Registered Office: Parsvnath Metro Tower, Near Shahdara Metro Station,  
Shahdara, Delhi- 110032 and Corporate Office at 6<sup>th</sup> Floor,  
Arunachal Building, 19, Barakhamba Road,  
New Delhi- 110001

....RESPONDENT

**CORAM:**

**Dr. Geeta Rathee Singh  
Nadim Akhtar**

**Member  
Member**

**Hearing:**

4<sup>th</sup>

**Present:** - Sh. Harsh Vardhan Advocate, counsel for complainants  
Ms. Isha Janjua Advocate, counsel for respondent

**ORDER (Dr. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint has been filed dated 29.08.2022 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

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3.	Nature of the Project	Residential
4.	DTCP License no.	129 to 138 of 2007 dated 03.03.2007
	Licensed area	112.956 Acres
5.	Date of application by complainants	06.08.2009
6.	Flat No.	A-207-G
7.	Flat Area	1450 sq.ft.
8.	Date of builder buyer agreement	28.08.2009
9.	Deemed date of possession	24 months plus 6 months grace period
10	Basic sale price	₹19,96,900/-
11.	Amount paid by complainant	₹16,50,819/-
12.	Offer of possession	28.10.2020

### B. FACTS OF THE COMPLAINT

3. Facts of complainants case are that on 06.08.2009 Apartment no. A-207-G, admeasuring 1450 sq.ft. was booked by complainants in a project named 'Parsvnath Elite Floors, Parsvnath City, Dharuhera, Rewari' being developed by respondent. Builder Buyer agreement was executed between the complainant and the respondent on 28.08.2009. A copy of original BBA has been annexed as Annexure C-1 with the complaint.

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4. Basic sale price of apartment was ₹19,96,900/-. In accordance with the payment plan, complainants by the year 2009 had paid a total amount of ₹16,50,819/-.
5. As per clause 9(a) of BBA construction of flat was to be completed within 24 months from the date of commencement of construction with grace period of 6 months but respondent has failed to do so till date. 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 complainants that the construction of the project is standstill and development of the project is into doldrums and project is far from completion. Complainants in para 20 of the complaint has stated that respondent without completion of unit as per terms of builder buyer agreement and without obtaining occupation certificate from competent authorities, had issued a letter for offer of fit out possession on 28.10.2020, whereby possession was offered on "as is where is basis". The said offer was not acceptable to the complainants because the project was neither complete nor was in habitable state. Complainants stated that non- completion of project implies that respondent has diverted the funds. Despite the fact that project cannot be completed in near future, respondent took almost 90%

  
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amount of the apartment from the complainants in the year 2009 itself, it shows the unreasonable conduct and malafide intentions of the respondent-promoter. 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 have sought following reliefs:
- (i) To direct the respondent-company to refund the amount of ₹ 16,50,819/- to the complainants at the earliest.
  - (ii) To direct the respondent-company to pay interest on paid amount by the complainants as per provisions of RERA Act.
  - (iii) To direct the respondent to pay ₹30,00,000/- on account of mental, physical and financial harassment caused to the complainants;
  - (iv) To direct the respondent – company to refund of all legal cost of ₹1,50,000/- incurred by the complainants;
  - (v) 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 20.12.2022 pleading therein:

  
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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 complainants are 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 ₹16,50,819/- made by the complainants. Further,

  
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respondent has stated in para 6 of reply that fit out offer of possession has already been made to the complainants in the year 2020.

10. 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 was 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. Respondent submitted that basic facilities and amenities like roads, electricity, water, sewage, storm water etc. are duly available at site and respondent has already obtained all the necessary approvals from the competent authorities. Further, OHSR & 2 nos. of tubewells; septic tank and STP has already been arranged for the allottees who have been residing. Respondent had already applied for the application of renewal of license which was still pending before the DTCP, Haryana. On 25.05.2016, Office of Senior Town Planner (STP), Gurgaon had confirmed to DTCP, Haryana that all the development works of the project site as per approved layout plan are complete. On 21.02.2021, inspection visit at project site was conducted by learned CTP, HRERA, Panchkula and the observations noted by learned CTP were submitted to Hon'ble Authority.
11. 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 complainants being an individual plot holder had extensive right to construct his own plot irrespective of the fact of renewal of license.

12. Respondent is trying to complete the project for which purpose they have applied for registration with Haryana Real Estate Regulatory Authority. 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**

13. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for respondent further stated that basic infrastructure and facilities have already been developed at site and number of families have been residing happily. Therefore, this is not an

  
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abandoned project. Respondent is trying to complete the remaining project and make offer of possession of units to allottees. She further stated that allowing refund at this stage will hamper progress of the project.

**F. ISSUES FOR ADJUDICATION**

14. 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**

15. 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) The plea of respondent regarding rejection of complaint on ground that project in question is unregistered project stands rejected. Issue of jurisdiction in case of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 passed 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 case as well.

Relevant part of which are reproduced below:

*"14. The Authority cannot accept such interpretation of law as has been sought to be put forwarded by learned counsel of respondent. RERA is a regulatory and*

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*protective legislation. It is meant to regulate the sector in overall interest of the sector, and economy of the country, and is also meant to protect rights of individual allottee vis-a-vis all powerful promoters. The promoters and allottees are usually placed at a highly uneven bargaining position. If the argument of learned counsel for respondent is to be accepted, defaulter promoters will simply get away from discharging their obligations towards allottee by not getting their incomplete project registered. Protection of defaulter promoters is not the intent of RERA Act. It is meant to hold them accountable. The interpretation sought to be given by learned counsel for respondent will lead to perverse outcome.*

*15. For the foregoing reasons, Authority rejects the arguments of respondent company. The application filed by respondent promoter is accordingly rejected.*

*Therefore, even if the project was unregistered, the Authority would have unfettered jurisdiction to deal with the complaints of the allottees as per Rule laid down by the Authority in the aforesaid complaint. Accordingly, either ways objections to jurisdiction of Authority raised by respondents holds no ground, and are rejected."*

(ii) Respondent in its reply has taken plea that the present complaint is barred by limitation. In this regard, it is observed that issue of limitation has time and again been dealt by the Authority in its various orders. In the present case complainant had booked unit / flat with the respondent, respondent was

under an obligation to hand over the possession of the booked unit as per timeline stipulated in the builder buyer agreement. Since, the promoter has miserably failed to fulfil his obligations till date, the cause of action which arose out of non-compliance of obligation to handover valid possession shall continue till the time a valid offer of possession is made after obtaining oc/part cc/cc from the competent authority. Therefore, there is a reoccurring cause of action. Further, the RERA Act does not provide for a limitation period. The RERA Act 2016 provides for obligations/ duties of the promoter and the cause of action shall subsist till the obligations are discharged by the promoter as per agreement for sale and RERA Act.

(iii) Another plea adopted by respondent promoter is that the office STP, Gurgaon on 25.05.2016 had confirmed to DTCP, Haryana that all development works at the project site as per approved layout plan are complete, therefore the project is complete in all aspects and the fit out possession offered on 28.10.2020 was also a valid offer of possession. With respect to this the Authority is of considered view that as per Haryana development and regulation of urban Area Act 1975, a project is said to be complete when the occupation certificate /completion certificate/part completion certificate is issued by



the competent Authority after ensuring due completion by the promoter. Since, till date no occupation certificate/completion certificate/part completion certificate has been issued by DTCP, the offer of possession without such relevant approvals could not be considered as a valid offer of possession.

(iv) 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 distress. They have applied for registration of project with RERA being an ongoing project. However, their license has not been renewed and the respondent is in serious defaults in payment of overdue External Development Charges (EDC). No development work has taken place for the last over six years. In its project jurisdiction, this Authority has passed following order dated 22.03.2021:

- “1. This is an ongoing project of which the license was obtained by the promoters in the year 2007. An application for registration of the project was filed on 10.5.2019. This matter has been listed before this Authority numerous times. The promoters have been shifting their stand from time to time. No construction work is taking place at the project site for the last many years.
2. In order to evaluate ground realities learned CTP of the Authority was appointed Local Commissioner to visit the site and submit his



report regarding the stage of construction of the project. Learned CTP has submitted his report which has been made part of file. The respondent company may obtain a copy of the report from the registry of the Authority if they so desire.

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

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



many years. In fact they have collected this money from large number of allottees but have not deposited the same with the Town & Country Planning Department. Further, as per information provided in the application for registration an amount of about Rs. 279 crores is required for completion of the project. Despite repeated opportunities granted to the promoters no money whatsoever has been arrange by the promoters for recommencing the construction activities.

Accordingly, the Authority is not satisfied with the capabilities and intentions of the promoters. For these reasons, it cannot and should not register the project at this stage.

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

7. Adjourned to 03.05.2021.”

(v) 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.

  
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amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

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

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

Rule 15 of HRERA Rules, 2017, prescribes the rate of interest, which is reproduced below for ready references:

***"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".*

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;

17. 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. 20.12.2022 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.
18. 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 ₹16,50,819/- 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% (8.70% + 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 10.70% till the date of this order and said amount works out to ₹41,07,380/- as per detail given in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued till 05.07.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹50,000/-	06.08.2009	₹ 74,490/-	₹1,24,490/-
2.	₹16,00,819/-	12.08.2009	₹23,82,071/-	₹ 39,82,890/-
<b>Total</b>	<b>₹16,50,819/-</b>		<b>₹ 24,56,561/-</b>	<b>₹41,07,380/-</b>

19. The complainants are seeking compensation of ₹ 30,00,000/- on account of pain, agony, harassment caused for delay in possession, compensation under Section 12 of RERA Act, 2016 and litigation costs of ₹ 1,50,000/-. 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

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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 complainants are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

#### **H. DIRECTIONS OF THE AUTHORITY**

20. 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 ₹41,07,380/- 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.

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



.....  
**NADIM AKHTAR**  
[MEMBER]



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