



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>54 of 2022</b>
<b>Date of filing:</b>	<b>27.01.2022</b>
<b>Date of first hearing:</b>	<b>15.03.2022</b>
<b>Date of decision:</b>	<b>12.04.2023</b>

Gurcharan Manchanda aged 58 years,  
W/o Shri Balbir Manchanda,  
R/o T-10, Rajouri Garden, Rajouri Market,  
West Delhi - 110027

....COMPLAINANT(S)

VERSUS

M/s Parsvnath Developers Ltd. through its Managing Director  
Office: Parsvnath Tower, Near Shahdara Metro Station,  
Shahdara, Delhi- 110032....RESPONDENT(S)

**CORAM:**                 **Dr. Geeta Rathee Singh**                                 **Member**  
                                  **Nadim Akhtar**   **Member**

**Present: -**                 Mr. Ramesh Malik, learned counsel for the complainant  
                                  through video conference

                                  Ms. Rupali S. Verma, learned counsel for the respondent  
                                  through video conference

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

1. Present complaint dated 27.01.2022 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 original allottee/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, Sonepat
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of application by original applicant	08.09.2004
4.	Unit area	500 sq. yards (Pg-20 reply)
5.	Date of endorsement in favour of complainant	24.04.2006
6.	Date of allotment	Not made
7.	Date of builder buyer agreement	Not executed
8.	Basic sale price	₹14,40,000/- (page 10 of complaint) ₹18,50,000/- (page 20 of reply)

*Retire*

9.	Amount paid by complainant	₹9,25,000/-
10.	Due date of possession	Cannot be ascertained
11.	Offer of possession	Not made

**B. FACTS OF THE COMPLAINT**

3. Facts of complainant's case are that complainant in the present case is deriving her rights from Mr. Gaurav Chawla (original allottee) who had booked a plot measuring 500 sq. yards in a township named 'Parsvnath City' under 'Present and Future Scheme' launched by respondent company at Sonapat, Haryana by paying booking amount of ₹2,75,000/-. Mr. Gaurav Chawla (original allottee) thereafter made payment of ₹6,50,000/- to respondent. Meaning thereby a sum of ₹9,25,000/- was paid by Mr. Gaurav Chawla (original allottee) by the year 2005 against basic sale price of ₹18,50,000/-. Copies of payment receipts have been annexed as Annexure C-02 (colly). Thereafter, Mr. Gaurav Chawla sold the booking rights in the plot to present complainant and endorsement in her favour was made on 24.04.2006. Copy of endorsement letter has been annexed as Annexure C-3 with the complaint.
4. That, on 28.02.2013 the respondent company wrote a letter to other allottees that they would not charge 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 execute plot buyer agreement and make allotment of the plot to the complainant. Respondent has been using hard earned money of complainant for their personal gain and benefits and did not invest the money in the completion of the project for which the complainant was duped to pay.

5. Respondent has illegally charged and kept with itself external development charges from the complainant way back 8 years even though there has been no development whatsoever by the state on or near the project in question and despite lapse of more than 8 years, the respondent company 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 said plot.
6. 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. Complainant had been continuously approaching the respondent to inquire about the progress at site but respondent deliberately maintained their adamant stand and kept giving lame excuses to the complainant on every occasion on one pretext or another that the construction shall be completed at the earliest and possession would be handed over to complainant shortly.

7. It has been submitted that 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**

8. The complainant in her 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 8 years as per Rule 15 of Haryana Real Estate (Regulation And Development) Rules, 2017 to the complainant;
  - (iv) To direct the respondent to pay ₹10,00,000/- as part of damages to the complainant 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 28.02.2022 pleading therein:-

9. 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.
10. There is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.
11. There is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the respondent, hence the present complaint is not maintainable.
12. Present complaint is barred by limitation and hence not maintainable..
13. On 08.09.2004, Mr. Gaurav Chawla (original applicant) expressed his interest in the booking of a plot in any of the new/upcoming project of the respondent and paid ₹2,75,000/- towards the registration.
14. 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. A copy of the application form dated 08.09.2004 signed by the original applicant is annexed with reply as Annexure R-1.

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.”

15. That, perusal of “clause F” of the Application Form would show that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in his favour and he has further given the undertaking that in case no allotment is possible in future, he would accept refund with simple interest at the rate of 10% per annum.
16. On 24.04.2006, Mr. Gaurav Chawla transferred/endorsed his interests, rights and liabilities in favor of present complainant after submitting the necessary/relevant documents in the office of respondent. A copy of endorsement/nomination letter dated 24.04.2006 is annexed as Annexure R-2.
17. On 24.04.2006, the complainant signed an 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, she 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.

18. The respondent had received an amount of ₹9,25,000/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-4.
19. It is a matter of record that the complainant had not paid any consideration after the endorsement in her favour and neither the respondent has made any demand after 2005 from the complainant which establishes the fact that there was no project and the registration was mere an expression of interest towards the future project of the respondent. 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.
20. 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 her.
21. The complainant has misdirected himself in filing the above captioned complaint before this Hon'ble Authority as there is neither nay



allotment nor any agreement to sale which can be adjudicated by this Hon'ble Authority.

22. 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.
23. Respondent did not demand any EDC from the complainant as she is not the allottee of the respondent company.
24. It has been submitted facts of present case different from Deepak Gupta case as in Deepak Gupta case agreement was executed between the allottee and the respondent company but in present case there is no agreement.
25. 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**

26. 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. He further pleaded that apart from this, complainant may also be awarded upfront interest and monthly interest till possession is handed over to the complainant, as awarded by this Authority in complaint case no. 865 of 2020 title Deepak Gupta versus Parsvnath Developers Ltd.

27. 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 complainant in the present case is seeking parity with both complaint case bearing nos. 723 of 2019 and 865 of 2020. Whereas, present case is neither similar to complaint case no. 723 of 2019 nor complaint case no. 865 of 2020. 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.' Secondly, in complaint case no. 865 of 2020 titled Deepak Gupta versus Parsvnath Developers Ltd., an agreement was executed between the allottee and the respondent company but in present case there is no agreement 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 her and shall accept refund of the amount deposited by her.

**F. ISSUES FOR ADJUDICATION**

28. Whether the complainant is entitled to relief of possession of plot booked by her 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**

29. 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. Before adjudicating upon said issue, it is pivotal to refer to the definition of allottee as provided in Section 2(d) of the Act. Said provision is reproduced below for reference:

**"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."

Upon a bare perusal of the definition of "allottee", it is clear that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of



allotment letter, exchange of development rights etc. Upon careful perusal of documents on record, it is revealed that original allottee had paid a sum of ₹2,75,000/- for purchasing a plot measuring 500 sq. yards in present and future 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 her with 10% interest per annum. Thereafter, the original allottee made a payment of ₹2,75,000/- subsequently the plot was transferred in the name of present complainant, and endorsement in her favour was made on 24.04.2006.

30. The fact that the respondent had accepted subsequent other payments from the complainant's predecessor (original applicant) apart from the initial booking amount which was paid by him and had issued receipts for the same, 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 had accepted payment of almost fifty percent of the basic sale price and issued receipts for the same for 'nothing in return', which is impossible and hard to believe. Mere fact that an allotment letter



specifying a unit no. 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 along with multiple payments 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 the obligation of respondent to allot him a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of original applicant as an allottee. It is observed that the promoter has repeatedly raised demands for a unit i.e. almost fifty percent of the basic sale price of the unit and therefore, same cannot be considered as mere 'expression of interest.'

Even an application form which specifies the details of unit such as area of the plot, price and concession in price etc, booked by original applicant 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 and specially with respect to agreement entered into between the allottee and the promoter before RERA Act of 2016 coming into force. Accepting the payment towards a unit in present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project



developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the original applicant was denied allotment of a specific unit after following that process. Documents available on record, clearly show that original applicant 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 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 her 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.

31. 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.

32. Further, another objection raised by respondent is that 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 plot of 500 sq. yards in its project 'Parsvnath City, Sonapat', the cause of action is still recurring and the legal objection that complaint is barred by limitation stands rejected.
33. 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 executed between the parties and complainant is seeking possession of the plot booked by her. 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**",operative part of which is reproduced below.

*"For the reasons recorded above, the complaints are allowed and the respondent is directed to allot and deliver the possession of booked plots to the complainants in the project Parsvnath City, Sonipat on payment of balance sale consideration recoverable from them. The respondent shall*





*comply with these directions within 90 days from the date of uploading of this order. In case the respondent 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 the open market at his own cost. The respondent however will be entitled to recover from the complainants the balance amount payable by them as per the rate agreed by the parties at the time of booking of plots."*

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.**

34. 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.

"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 Sonapat, 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.”

35. 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 besides other alternative options as observed by Hon'ble Appellate Tribunal in its order dated 31.10.2022.

36. 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**

37. Hence, the Authority in consolidation with the modifications made by Hon'ble Appellate Tribunal, 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 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 her. 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 her 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 her as per the rate agreed by the parties at the time of booking of plot.
- (ii) Respondent is also directed to pay the complainant delay interest i.e. at the SBI highest marginal cost of lending rate (MCLR) +2% i.e. 10.70% 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 allottee wishes to purchase equivalent size plots of her own in resale of the colony of the promoter, or equivalent plots in any other project of the appellant in District Sonapat, she 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. 10.70% 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.

38. **Disposed of.** File be consigned to record after uploading order on the website of the Authority.

  
.....  
NADIM AKHTAR  
[MEMBER]

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