



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

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|------------------------|---------------------|
| Complaint nos.: | 3220 & 3221 of 2022 |
| Date of filing: | 19.01.2023 |
| Date of first hearing: | 15.03.2022 |
| Date of decision: | 31.05.2023 |

| | |
|-----------------|---|
| Name of Builder | Parsvnath Developers Ltd. |
| Project Name | Present and Future projects; Location: Parsvnath City, Sonapat |

| Sr. No. | Complaint No. | Complainant |
|---------|---------------|--|
| 1. | 3220 of 2022 | Monica Rathee Shah, W/o Vijay Rasiklal Shah, D/o Late Rajesh Rathee, R/o 50, Government Road, Etobiocoke, ON M8X1V9, Canada (Through authorised representative Deepak Sawney vide special power of attorney dated 28.06.2021) |
| 2. | 3221 of 2022 | Anoop Singh Ahlawat (Through authorised representative Deepak Sawney vide special power of attorney dated 28.06.2021), R/o C-45, Nehru Road, Adarsh Nagar, Delhi - 110033 |

VERSUS

Parsvnath Developers Ltd. through its authorised signatory,

Regd. Office: Parsvnath Towers,

Near Shahdara Metro Station, Shahdara, Delhi - 110001

....RESPONDENT(S)

Rathee

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

Present: - Mr. Drupad Sangwan, counsel for the complainants through video conference (in both complaints)

 Ms. Isha, counsel for the respondent (in both complaints)

ORDER (Dr. GEETA RATHEE SINGH -MEMBER)

1. Present complaints dated 19.01.2023 have 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.
2. Captioned complaints are taken up together as facts and grievances of both the complaints are identical and relate to the same project of the respondent, i.e., "Parsvnath City, Sonapat". Therefore, Authority by passing a common order shall dispose of both captioned complaints. Complaint No. 3220 of 2022 titled Monica Rathee Shah versus Parsvnath Developers Ltd. has been taken as lead case for disposal of both matters.



A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the units booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

(i) Complaint no. 3220 of 2022

| S.No. | Particulars | Details |
|-------|--|--|
| 1. | Name of the project | Present and Future projects; Location: Parsvnath City, Sonapat |
| 2. | Name of promoter | Parsvnath Developers Ltd. |
| 3. | Date of application by original applicant | 10.02.2005 |
| 4. | Unit area | 300 sq. yards |
| 5. | Date of builder buyer agreement | Not executed |
| 6. | Date of endorsement in favour of complainant | 28.01.2009 |
| 7. | Basic sale price | ₹15,75,000/- |
| 8. | Amount paid by complainant | ₹8,10,000/- |
| 9. | Offer of possession | Not made |

B. FACTS OF THE COMPLAINT NO. 3220 OF 2022

4. Facts of complainant's case are that on 10.02.2005, Narinder Kaur and Mrs. Surinder Kaur (original allottees) booked a plot measuring 300 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 ₹3,93,750/- to the respondent. Copies of payment receipts have been annexed at pages 16-17 of the complaint.

5. The original allottees sold all their booking rights to Mrs. Virmati Rathee and endorsement in her favour was made on 13.02.2006. Thereafter, Mrs. Virmati Rathee made payment of ₹3,93,750/- on 15.02.2006. Copies of receipts dated 15.02.2006 have been annexed at pages 18-19 of the complaint.
6. Mrs. Virmati Rathee sold all her booking rights to present complainant- Monica Rathee Shah and endorsement in her favour was made vide letter dated 28.01.2009 and respondent confirmed that the name of the complainant stood substituted in place of Mrs. Virmati Rathee and all original receipts have been duly endorsed in her name. Copy of endorsement letter dated 28.01.2009 has been annexed at page 20 of the complaint.
7. At the time of issue of letter dated 28.01.2009, complainant was known by the name 'Monica Rathee' and post demise of her first husband, the name of the complainant changed to her present name 'Monica Rathee Shah'. The complainant has authorized her real brother as her authorized representative vide special power of attorney dated 28.06.2011 for taking all necessary steps in this matter. Copies of identity documents and copy of special power of attorney have been annexed as Annexure C-2 colly.

Rathee

8. Despite booking of plot in the year 2005, neither any plot buyer agreement has been executed nor has any allotment been made by respondent till date. There has been lapse of more than 17 years from the date of booking but the project is not yet complete and there is even no possibility of it being completed in near future.
9. The complainant has approached the respondent several times through telephonic calls, personal visits requesting for possession of the plot and various representatives of the respondent showed the project site and also assured to hand over possession of plot soon. However, all said assurances of the respondent were moonshine as the respondent did not complete the development of project for handing over the possession of the plot nor returned back the amount paid with interest. Hence, present complaint has been filed.

C. RELIEF SOUGHT

10. The complainant in his complaint has sought following reliefs:
 - (i) Allow the present complaint;
 - (ii) Direct the respondent to deliver the actual and physical possession of the plot in "Parsvnath City, Sonapat" at Sector 08, NH-1, Sonapat, Haryana, as was duly allotted in favour of the complainant along with all facilities and amenities as agreed to between the complainant and the respondent at time of making allotment, along with all necessary rights to carry out

construction on said plot and further direct the respondent to pay interest at 18% p.a. on the deposited amount - ₹7,87,500/- (Rupees Seven Lacs, Eighty Seven Thousand Five Hundred) from proposed date of delivery of possession as assured at the time of allotment of plot to original allottee till the date of actual physical possession of the plot is handed over to the complainant.

OR IN THE ALTERNATIVE

- (iii) Direct the respondent to refund the amount deposited by the original allottee and subsequent allottee along with any taxes as charged by the respondent till date amounting to ₹7,87,500/- (Rupees Seven Lacs, Eighty Seven Thousand Five Hundred) along with interest @18% per annum from various dated of payment of amount (as per payment acknowledgement receipts attached) till date of realisation to the complainant.
- (iv) Direct inquiry (forensic audit) in relation to the affairs of the respondent.
- (v) Direct the respondent to grant compensation of ₹50,000/- (Rupees Fifty Thousand) towards litigation cost.
- (vi) Revoke registration of the respondent under Section 5 of the RERA Act, which has otherwise also expired, and
- (vii) Pass any other orders in the interest of justice.


Ramesh

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 16.03.2022 pleading therein:-

11. 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.
12. There is no 'Agreement to Sale' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable before this Hon'ble Authority.
13. 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.
14. 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.

15. In similar circumstances, in the matter of "Savita Kathuria versus Parsvnath Developers Ltd." in Appeal No. 193 of 2019, Hon'ble Appellate Tribunal had been pleased to accept the contentions of the respondent company to the extent that in the absence of any agreement to sell or any other agreement for possession, the relief of possession is not tenable and therefore, in the above stated appeal the Hon'ble Tribunal had directed the complainant to accept refund of the deposited amount.
16. On 10.02.2005, Ms. Narinder Kaur and Ms. Surinder Kaur expressed their interest in the registration of a plot in any of the upcoming project of the respondent and paid ₹3,93,750/- towards the registration.
17. That, neither location nor site of the project was confirmed at time of registration, therefore, the original applicants while filling the application form gave undertaking that in case no allotment is made, and they 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 10.02.2005 signed by the original applicants is annexed with reply as Annexure R-1.

18. Clause F of the application form clearly stated that while proceeding ahead with the purchase, the original applicants had clearly understood that no allotment was made in their favour and they had further given the undertaking that in case no allotment is possible in future, they would accept refund with simple interest at the rate of 10% per annum.
19. On 03.04.2006, original applicants transferred their interest in favour of Mrs. Virmati Rathee from whom present complainant had purchased the booking rights and endorsement in her favour was made on 28.01.2009.
20. The complainant had signed and executed an affidavit cum undertaking and indemnity, which clearly stipulated that in case the complainant is not allotted any plot in upcoming 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.

21. The respondent had received an amount of ₹8,10,000/- till date towards the advance registration. A copy of the latest ledger is annexed as Annexure R-4.
22. That, it is a matter of record that the respondent had not demanded any amount from the complainant after the year 2006. 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 and respondent is ready to honor its commitment as per terms of the undertaking given by her.
23. The money receipts clearly depicts that necessary ingredients of an agreement much less a valid contract is conspicuously missing in receipts, which have been annexed by the complainant in the present complaint, there is no plot number, no plot size and no specification of the project and rather, receipts specifically mention advance against present and future projects.
24. The complainant has misdirected herself in filing the above captioned complaint before this Hon'ble Authority as complainant does not even fall within the realm of jurisdiction of this Authority as there is neither

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

25. 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.
26. 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

27. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is willing to accept refund of the amount deposited by her along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainant, but is ready to refund the amount.

F. ISSUES FOR ADJUDICATION

28. Whether the complainant is entitled to refund of amount deposited by her along with interest 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 and registration was mere an expression of interest towards future project of respondent. 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 provisions are 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. Upon careful perusal of documents on record, it is revealed that the original allottee had paid a sum of ₹3,93,750/- for purchasing a plot measuring 300 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. The fact that the respondent had accepted subsequent other payments from the

complainant's predecessor in interest apart from the initial booking amount which was paid by her and had issued receipts for the same, clearly shows that respondent had recognised the original allottee as his allottee. Thereafter, the plot was transferred in the name Mrs. Virmati Rathee and then in name of present complainant and endorsement in her favour was made on 28.01.2009, whereby it was acknowledged by the promoter that he has accepted the complainant as the allottee against the unit booked by the original allottee.

30. Respondent in his reply has contended that there is no "agreement to 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 to the complainant 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 she was not an allottee of the respondent. Once respondent has accepted the application form along with multiple payments from complainant's predecessor 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 her a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of applicant as an allottee. It is observed that the promoter has repeatedly raised demands for a unit

i.e. almost more than 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 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 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 complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly show 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 her rights by way of



an endorsement in favour of the subsequent allottee who then sold the booking rights to 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.

31. 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 plot of 300 sq. yards in its project 'Parsvnath City, Sonapat', the cause of action is recurring and the legal objection that complaint is barred by limitation stands rejected.
32. Further, the Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:
 - (i) That in this complaint booking was made in 'present and future' scheme; no agreement has been executed till date; complainant has prayed for relief of refund as he wishes to withdraw from

the project in question; respondent has expressed his inability to offer plot to the complainant and is agreeable to refund the amount deposited. For these reasons, a case is clearly made out to allow relief of refund as sought by complainant. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainant deserves to be granted.

- (ii) Complainant has sought refund along with interest @18% p.a. however, as per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 provides for prescribed rate of interest which is as under:

"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 costof 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".

- (iii) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
- (iv) Consequently, as per website of the State Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 31.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.
- (v) Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount 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 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated in the captioned complaint nos. 3220 of 2022 and 3221 of 2022, the total amount along with interest calculated at the rate of 10.70% till the date of this order as per details given in the table below:

| S.No. | Complaint no. | Principal Amount | Interest Accrued till 31.05.2023 | TOTAL AMOUNT PAYABLE TO COMPLAINANTS |
|-------|---------------|------------------|----------------------------------|--------------------------------------|
| 1. | 3220 of 2022 | ₹8,10,000/- | ₹15,35,273/- | ₹23,45,273/- |
| 2. | 3221 of 2022 | ₹8,25,000/- | ₹15,72,383/- | ₹23,97,383/- |

(vi) The complainant is seeking compensation on account litigation costs. 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

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mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

- (vii) The complainant has also sought relief that registration granted to respondent for project in question be revoked, inquiry in relation to the affairs of the company be directed. In this regard it is observed that said reliefs have not be pleaded in the main complaint nor argued and pressed by complainant during arguments. Hence, all said reliefs sought by complainant are denied.

H. DIRECTIONS OF THE AUTHORITY

33. Hence, the Authority hereby passes this common order in captioned complaints 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:

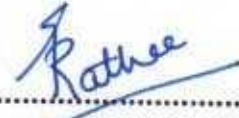
- (i) Respondent is directed to refund the entire amount of ₹23,45,273/- and ₹23,97,383/- to the complainants in complaint nos. 3220 of 2022 and 3221 of 2022 respectively.

- (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.

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



.....
NADIM AKHTAR
[MEMBER]



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