



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	52 of 2022
Date of filing:	09.02.2022
Date of first hearing:	05.04.2022
Date of decision:	26.04.2023

1. Sandeep Sapra

S/o Mr. N.P. Sapra, R/o Plot No. 11, Aashirwad Apartment,
Sector 11, Dwarka, New Delhi – 110078

2. Pooja Sapra

W/o Mr. Sandeep Sapra, R/o Plot No. 11, Aashirwad Apartment,
Sector 11, Dwarka, New Delhi – 110078

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.

Registered Office : Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi, 110032

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Geeta Rathee

Present: - Mr. Saurabh Sachdeva, counsel for the complainants through video conference

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

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 09.02.2022 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 unit booked by complainants, the details of sale consideration, the amount paid by them and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Parsvnath Preston, Sonapat
2.	Name of the promoter	Parsvnath Developers Ltd.

Geeta Rathee

3.	Date of booking by complainants	04.01.2008
4.	Unit no. and area	T4-702, 7 th Floor 1265 sq.ft. (page 11 of complaint)
6.	Date of builder buyer agreement	15.03.2008
7.	Date of EMI agreement	07.02.2008
8.	Basic sale price	₹27,69,930/-
9.	Amount paid by complainants	₹26,31,433/-
10.	Due date of possession	31.10.2011 (page 16 of complaint)
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of the complainants case are that in the year 2008, complainants booked a flat bearing no. T4-702, tower-4, seventh floor, admeasuring 1265 sq. ft. in a project named 'Parsvnath Preston' being developed by respondent by paying booking amount of ₹1,38,497/-. As per clause 10(a) of flat buyer agreement executed between the parties on 15.03.2008, respondent was under an obligation to hand over possession of the flat within a period of 36 months from the date of start of foundation of particular tower along with grace period of 6 months, but respondent has failed to fulfil his promises. Copy of flat buyer agreement has been annexed as Annexure-04 with the complaint.

4. The unit was booked as per EMI subvention scheme of the builder wherein down payment of ₹4,81,433/- was made by the complainants and a bank loan of ₹21,50,000/- was got disbursed from Axis Bank Ltd. to builder in April 2008 itself. Thus, a total amount of ₹26,31,433/- was paid to the respondent till April 2008 out of the basic sale price of the unit amounting to ₹27,69,930/-. Complainants have annexed copies of payment receipts at pages 39-43 of his paperbook. As per EMI agreement dated 07.02.2008 (copy annexed as Annexure A-03 with the complaint), respondent was supposed to reimburse the EMI's in respect of bank loan till the date of offer of possession of the flat was made to the complainants. But the respondent has failed to reimburse EMIs to complainants from 2018, as a result, the burden of paying EMI has fallen on the complainants and they have been paying EMI's since then.
5. Neither possession has been offered till date nor, allegedly, construction has started at the site of the project nor have EMIs been reimbursed by respondent. It has been contended that construction at the site is at standstill since 2008 and project has been abandoned by respondent. Complainants approached the respondent many times for delivery of possession of their flat but respondent did not respond to their letters, emails, telephonic calls and personal visits seeking information about the status of the project and delivery of possession

of their flat. There has been lapse of more than 10, therefore the complainants have lost faith in respondent and have no hope of getting the flat. Respondent has utilized the money of the complainants for his own benefits and has violated the terms of agreement. Therefore, complainants wish to withdraw from the project. Hence, present complaint has been filed.

C. RELIEF SOUGHT

6. The complainants in their complaint have sought following reliefs:-
- (i) Direct the respondent to return/refund the amount deposited by the complainants amounting to ₹26,31,433/- (Twenty Six Lakhs Thirty One Thousand Four Hundred and Twenty Three) along with interest from the date of possession i.e. 31st October, 2011 as per builder's agreement and details mentioned in form REP-1 at the rate prescribed by the Act, 2016.
 - (ii) Direct the respondent to reimburse the remaining EMI to the complainants as the agreement dated 7th February, 2008.
 - (iii) Direct the respondent to pay legal expenses of ₹1 lakh incurred by the complainants.
 - (iv) Any other damages, interest, relief which the Hon'ble Authority may deem fit and proper under the circumstances of the case may kindly be passed in the favour of the complainants and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 16.05.2022 pleading therein:-

7. Present complaint pertains to unregistered project of respondent company. Further, Hon'ble Supreme Court in the matter titled Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others has ruled that the RERA does not have jurisdiction to entertain complaints relating to un-registered projects.
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. The complaint is bad for non-joinder of parties. The financial institution is not party to the present complaint.

10. On 04.02.2008, complainants booked a flat bearing no. T4-702, 7th floor, admeasuring 1265 sq.ft. in the project named 'Parsvnath Preston, Sonapat'. Complainants proceeded with the booking after conducting proper due diligence and being aware about the status of the project.
11. On 15.03.2008, flat buyer agreement was executed between the parties as per which basic selling price of the flat was fixed at ₹27,69,930/- and the complainants had opted to make further payment as per the EMI Subvention Scheme Plan.
12. It has been contended that project is being developed in terms of statutory approvals granted by competent authority. It has been submitted that licence no. 1205-1206 of 2006 dated 06.10.2006 had been duly issued by Town & Country Planning Department and respondent has applied for its renewal for the period from 06.10.2019 to 05.10.2024.
13. It has also been submitted that EDC, IDC, conversion charges etc have been paid in full to the Competent Authority.
14. It has been admitted that complainants had paid ₹26,31,433/- to the respondent company.
15. There is no intentional delay on the part of respondent and the project got delayed for reasons beyond control of respondent company. The project could not achieve pace as the customers/allottees did not make

timely payments an even started opting out of the project. All such factors played vital role in causing damage to the project and hence development and construction of the project could not take place as per the agreed schedule. However, respondent company is putting its best efforts to complete the construction work at the project site.

16. It has been submitted that time is not of essence of contract. It has also been contended that till date a sum of ₹25,00,875/- has been paid to complainants on account of EMIs paid by them to the bank.
17. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

18. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the complainants argued that since complainants want to withdraw from the project, the amount deposited by them may be refunded along with interest and respondent be directed to clear the outstanding loan and reimburse the EMIs which have not been paid by him. Learned counsel for respondent submitted that project was being developed in terms of statutory approvals granted by competent authority. She further stated that respondent is determined to give possession of booked flat to the

complainants, and if deposited amount of the complainants are refunded to them, then entire project will be halted.

F. ISSUES FOR ADJUDICATION

19. Whether the complainants are entitled to refund of amount deposited by them and reimbursement of EMIs paid by them to bank, along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

20. Case was heard at length on 05.08.2022 and Authority while rejecting the objection of respondent that Authority does not have jurisdiction to entertain complaints relating to un-registered projects, had observed that relief of refund in favour of complainants along with interest deserves to be granted. Relevant part of order dated 05.08.2022 is reproduced below for reference:-

“18. Further, after hearing the contentions of both parties and going through documents on record, Authority observes that due date of offering possession was 2011. Already delay of approximately 11 years has taken place. After such inordinate delay, Authority could consider continuation of the allottees in the project only if the project was completed or an application for grant of occupation certificate had been filed. On the contrary, in this case, project is not complete, nor there is any plan of action for completing it. For these reasons, a case is clearly made out to allow relief of refund as sought by complainants. So, Authority is of the view that refund deserves to be granted as prayed for.

19. However, complainants have not placed on record proof of outstanding loan against them and have not specified the amount of EMIs paid by them to bank which were not reimbursed by respondent as the agreement executed between the parties. Therefore, in order to determine the total amount

payable to complainants as well as amount of outstanding loan against them, certain documents need to be placed on record. So, complainants are directed to place on record the proof of outstanding loan amount against them by submitting statement of concerned bank in this regard and submit calculations of EMIs which respondent is liable to pay to them. Respondent shall also submit proof of payment of ₹ 25,00,875/- to the complainants. Said documents and calculations shall be submitted within fifteen days of uploading of this order.

20. With these directions, case is adjourned to 20.10.2022.”

21. The matter was adjourned to 20.10.2022 to determine the total amount payable to complainants as well as amount of outstanding loan against them and complainants were directed to place on record the proof of outstanding loan amount against them and submit calculations of EMIs which respondent is liable to pay to them. Respondent was also directed to submit proof of payment of ₹ 25,00,875/- to the complainants.
22. In compliance to above mentioned directions, complainants submitted certain documents on 29.09.2022. As per the account statement issued by bank (annexed with said documents), a sum of ₹15,67,894/- remained outstanding against the bank as on 21.09.2022. It was also submitted that respondent had not reimbursed EMIs after 2018 which amounts to a sum of ₹10,04,625/-.
23. On 21.12.2022, respondent also submitted the proof of payment/excel sheet of ₹25,00,875/- made to the complainants. The matter was then

heard on 25.01.2023, wherein the respondent submitted an application dated 05.01.2023 in Court under Section 151 of Code of Civil Procedure, 1908 seeking permission to place on record a true copy of bank statement which clearly depicted that an amount of ₹25,00,875/- had been paid to the complainants and respondent was directed to supply copy of same to the complainants.

24. The matter was again heard today. Learned counsel for the complainants admitted that respondent had reimbursed a sum of ₹25,00,875/- to the complainants till date and requested that remaining amount be also refunded to him. So, the application dated 05.01.2023 is allowed and copy of bank statement produced by respondent is taken on record.
25. Since, no other issue remains which need to be adjudicated, Authority decides to confirm the decision already taken vide its order dated 05.08.2022, which shall form part of this order and allows the complaint filed by complainants. For these reasons, a case is clearly made out to allow relief of refund as sought by complainants. Therefore, as per provisions of Section 18 of the Act, relief of refund as sought by the complainants deserves to be granted 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 amounts.

26. 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 the flat to the complainants, the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected.
27. Respondent has also taken an objection that complaint is bad for non-joinder of parties as the financial institution is not party to the present complaint. In this regard it is observed that since no relief has been claimed by complainants against the financial institution and the payments made by the complainants have been admitted by the respondent, the financial institution cannot be said to be a necessary party in the complaint. Hence, respondent's objection that complaint is bad for non-joinder of parties is rejected.
28. Complainants are also seeking legal expenses and damages. 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 complainants/legal representatives are advised to approach the Adjudicating Officer for seeking the relief of damages and compensation.

H. DIRECTIONS OF THE AUTHORITY

29. Complainants in the present case has made down payment of ₹4,81,433/- and a bank loan of ₹21,50,000/- was got disbursed from Axis bank to respondent. 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) To refund the complainants an amount of ₹4,81,433/- 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 its actual realization.

Accordingly, total amount along with interest calculated at the rate of 10.70% works out to ₹12,64,352/- as per detail given in the table below:

S.No.	Principal Amount paid by complainants	Date of payment	Interest Accrued till 26.04.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	₹1,38,497/-	04.01.2008	₹2,27,038/-	₹3,65,535/-
2.	₹1,26,992/-	05.02.2008	₹2,06,987/-	₹3,33,979/-
3.	₹50,000/-	20.03.2008	₹80,851/-	₹1,30,851/-
4.	₹1,65,944/-	26.03.2008	₹2,68,043/-	₹4,33,987/-
Total	₹4,81,433/-		₹7,82,919/-	₹12,64,352/-

- (ii) To pay the complainants outstanding loan amount of ₹15,67,894/- as on 21.09.2022 .
- (iii) To refund the complainants amount of EMIs paid by them to bank from their own pocket and were not reimbursed by respondent (as per terms of EMI agreement executed between them), which as per complainants worked out to ₹10,04,625/- ,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 the amounts became due till date of its payment.

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Complainants will make demand for payment of these amounts duly supported by bank statements in respect of outstanding loan amount as well as amounts of EMIs paid by him to bank which were not reimbursed. The interest on EMIs paid be also calculated and certified by an accountant.

- (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.

30. Complaint is, accordingly, **disposed of.** File be consigned to the record room after uploading the order on the website of the Authority.



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NADIM AKHTAR
[MEMBER]



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Dr. GEETA RATHEE SINGH
[MEMBER]