



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2304 of 2022
Date of filing:	06.09.2022
Date of first hearing:	17.01.2023
Date of decision:	22.03.2023

Arvind Kumar Rana

S/o Sh. Ram Chandra Singh,

R/o H-4/904 Erore Sampoonam,

Greater Noida West G.B. Nagar, U.P.

....COMPLAINANT

VERSUS

1. Parsvnath Developers Ltd. through its Managing Director,
Registered Office :Parsvnath Tower, Near Shahdara Metro Station,
Shahdara, Delhi, 110032
2. M/s Dreamweaver Realtors Pvt. Ltd. through its Managing Director,
Office : Parsvnath Tower, near Shahdara Metro Station
3. Jaguar Buildwell Pvt. Ltd. through its Managing Director,
Office : Parsvnath Tower, near Shahdara Metro Station
4. Evergreen Realtors Pvt. Ltd. through its Managing Director,
Office : Parsvnath Tower, near Shahdara Metro Station

Rathore

1.	Name of the project	Parsvnath Preston, Sonapat
2.	Name of the promoter	Parsvnath Developers Ltd.
3.	Date of booking by complainant	31.12.2007
4.	Unit no. and area	T4-801, 8 th floor, 1265 sq.ft. (page 4 of complaint)
6.	Date of builder buyer agreement	01.02.2008
7.	Basic sale price	₹26,95,980/-
8.	Amount paid by complainant	₹25,72,965/-
9.	Due date of possession	July 2011 (page 5 of complaint)
10.	Offer of possession	Not made

B. FACTS OF THE CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT

3. Facts of the complainant's case are that in respondent no. 1 is the builder and developer of the project 'Parsvnath Preston' and respondent no. 2 to 4 are the land owners of the project and development agreement was executed between the respondent no. 1 and respondent no. 2 to 4 wherein respondent no.1 acquired rights for development of a group housing complex on the project land under the terms of which respondent no. 1 is fully entitled, authorised and competent to carry out development, construction and marketing of residential flats/apartments and to sale/book/allot the same, to enter

into agreement of sale/allotment and to receive sale consideration and to execute sale/conveyance deed in respect thereof on completion. Hence, all the respondents are equally, jointly and severally liable for the act, deed and consequences.

4. In the year 2007, complainant booked a flat bearing no. T4-801, tower-4, eighth floor, admeasuring 1265 sq. ft. in a project named 'Parsvnath Preston' being developed by respondent no.1 by paying booking amount of ₹1,38,500/-. As per clause 10(a) of flat buyer agreement executed between the parties on 01.02.2008, 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, however respondent has failed to fulfil his promises. Copy of flat buyer agreement has been annexed as Annexure-A with the complaint.
5. The unit was booked under EMI subvention scheme of the builder wherein down payment of ₹4,16,181/- was made by the complainant and a bank loan of ₹21,56,784/- was got disbursed from ING Vysya Bank to builder in April 2008 itself. Thus, a total amount of ₹25,72,965/- was paid to the respondent till April 2008 out of the basic sale price of the unit amounting to ₹26,95,980/-. Complainant have annexed copies of payment receipts as Annexure D(colly) at pages 55-59 of his paperbook. A tripartite agreement dated 25.02.2008

executed between complainant, respondent no.1 and ING Vysya Bank has been annexed as Annexure – C. As per EMI agreement (copy annexed as Annexure-B with the complaint), respondent no. 1 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 complainant. However, the respondent no. 1 reimbursed the EMIs to the complainant only from April 2008 till December 2013 and thereafter started default in reimbursing the EMI instalments paid by the complainant. From January 2014 to July 2022, respondent no. 1 did not reimburse 63 EMI's @₹27,209/- p.m. despite various requests and demands of complainant, as a result, the burden of paying EMI fell on the complainant and he has been paying EMI's since then.

6. That, neither possession has been offered till date nor, construction has started at the site of the project. Hence, respondents cheated the complainant with malafide intentions and in order to cause wrongful loss to the complainant and wrongful gain for themselves. The complainant served legal notice dated 02.07.2022 to respondents however the respondents neither replied nor complied with the terms of the said legal notice. Complainant also made complaint to Commissioner of Police through speed post and email dated 02.07.2022 but no action has been taken by his office in connivance to


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the respondents till date. Therefore, complainant wishes to withdraw from the project. Hence, present complaint has been filed.

C. RELIEF SOUGHT

7. The complainant in his complaint has sought following reliefs:-

- (i) The complainant is entitled for ₹17,14,167/- towards default reimbursement of EMI w.e.f. January 2014 till July 2022 i.e. 40 EMI reimbursed out of 103 EMI's and 63 EMIS @ ₹27,209/- per month w.e.f. January 2014 to July 2022 were pending.
- (ii) The complainant is entitled for reimbursement of EMI amounting to ₹27,209/- w.e.f. August 2022 till the offer of possession of the above said flat/refund of the paid sale consideration amount ₹25,72,965/- along with interest @9% p.a. w.e.f. 01.02.2008.
- (iii) The complainant is entitled for interest @18% p.a. on the arrears of reimbursement of EMI i.e. 17,14,167/- from the date of filing of present claim till its realization.
- (iv) The complainant is entitled for recovery of total amount of ₹25,72,965/- towards cost/payment of the flat paid to the builder.
- (v) The complainant is entitled for ₹33,57,720/- towards interest @9% p.a on the total payment i.e ₹25,72,965/- w.e.f. 01.02.2008 to 31.07.2022.

- (vi) The complainant is entitled for pendent lite and future interest @9% p.a on the total payment i.e. ₹25,72,965/- from the filing of the complaint till the date of refund of the aforesaid amount.
- (vii) The complainant is entitled for ₹8,34,900/- towards compensation @₹5 per square feet per month of the super area i.e. 1265 sq. ft. of the flat w.e.f. August 2011 to July 2022 for the delayed period of offering of possession.
- (viii) The complainant is entitled for pendent lite and future compensation @₹6325/- per month towards compensation @₹5 per square feet per month of the super area i.e. 1265 sq. ft. of the flat from the filing of the complaint till the date of refund of the aforesaid amount.
- (ix) The complainant is entitled for ₹2,50,000/- towards cost of the complaint and litigation charges.
- (x) The complainant is entitled for ₹20,00,000/- towards compensation for mental and physical agony.
- (xi) Any other order which this Hon'ble forum deem fit and proper may also be granted in favour of complainant against the respondents.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 13.10.2022 pleading therein:-

8. Present complaint is liable to be dismissed as the flat buyer agreement was executed in the year 2008 i.e. more than 10 years before the Real Estate (Regulation & Development) Act, 2016 came into force. Therefore, provisions of RERA Act are inapplicable to the present agreement and complaint as well. RERA Act, cannot be said to have retrospective application and impose limits, retrospective. Provisions of the Act cannot be applied retrospectively.
9. 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.
10. 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

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.
17. The complaint is bad for non-joinder of parties. The financial institution is not party to the present complaint.
18. 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

19. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the complainant argued that vide order dated 17.01.2023, complainant was directed to submit a statement issued by concerned bank depicting the total amount of loan availed by complainant, also whether loan has been fully repaid or not and if not, how much amount is outstanding against complainant. If loan has been fully repaid by complainant, he shall submit a copy of no objection certificate issued by bank. Learned counsel for the complainant stated that said documents were submitted in the Authority on 17.01.2023. He argued that entire loan has been cleared

by the complainant but respondent has defaulted in reimbursement of EMIs. Since complainant want to withdraw from the project, the amount deposited by him may be refunded along with interest and respondent be directed to reimburse the EMIs which have not been paid by him to the complainant.

Learned counsel for respondent also submitted that project was being developed in terms of statutory approvals granted by competent authority. She further stated that due to certain reasons beyond the control of respondent company project could not be completed, however, respondent is ready to refund the amount deposited by complainant.

F. ISSUES FOR ADJUDICATION

20. Whether the complainant is entitled to refund of amount deposited by him and reimbursement of EMIs paid by him to bank, along with interest in terms of Section 18 of Act of 2016?

G. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

21. Authority has heard the arguments of both parties and has perused the documents available on record. After going through the submissions made by both the parties, Authority observes as under:

- (i) The plea of respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The Authority observes that it has territorial as well as subject matter jurisdiction to

adjudicate the present complaint. Jurisdiction in matters of unregistered projects has already been decided by the Authority vide its order dated 30.03.2022 in complaint case no. 191 of 2020 titled '*Mrs. Rajni & Mr. Ranbir Singh versus M/s Parsvnath Developers Ltd.*' and same is followed in present case as well.

- (ii) 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 plot to the complainant, the cause of action is re-occurring till date and the ground that complaint is barred by limitation stands rejected.
- (iii) One of the averments of respondent is that provisions of the RERA Act of 2016 will not apply on the agreements executed prior to coming into force of RERA Act, 2016 i.e provisions of the RERA Act cannot be applied retrospectively. In this regard, Authority observes that after coming into force the RERA Act, 2016, jurisdiction of the civil court is barred by Section 79 of the Act. Authority, however, is deciding disputes between builders and buyers strictly in accordance with terms of the provisions of flat-buyer agreements. After RERA Act of 2016 coming into force the terms of agreement are not re-written, the

Act of 2016 only ensure that whatever were the obligations of the promoter as per agreement for sale, same may be fulfilled by the promoter within the stipulated time agreed upon between the parties. Issue regarding opening of agreements executed prior to coming into force of the RERA Act, 2016 was already dealt in detail by this Authority in complaint no. 113 of 2018 titled as Madhu Sareen v/s BPTP Ltd decided on 16.07.2018. Relevant part of the order is being reproduced below:

“The RERA Act nowhere provides, nor can it be so construed, that all previous agreements will be re-written after coming into force of RERA. Therefore, the provisions of the Act, the Rules and the Agreements have to be interpreted harmoniously. However, if the Act or the Rules provides for dealing with certain specific situation in a particular manner, then that situation will be dealt with in accordance with the Act and the Rules after the date of coming into force of the Act and the Rules. However, before the date of coming into force of the Act and the Rules, the provisions of the agreement shall remain applicable. Numerous provisions of the Act saves the provisions of the agreements made between the buyers and seller.”

Further, as per recent judgement of Hon'ble Supreme court in Newtech Promoters and Developers Pvt. Ltd Civil Appeal no. 6745-6749 of 2021 it has already been held that the projects in which completion certificate has not been granted by

the competent Authority, such projects are within the ambit of the definition of on-going projects and the provisions of the RERA Act,2016 shall be applicable to such real estate projects, furthermore, as per section 34(e) it is the function of the Authority to ensure compliance of obligation cast upon the promoters, the allottees and the real estate agents under this Act, and the rules and regulations made thereunder, therefore this Authority has complete jurisdiction to entertain the captioned complaint.

Execution of builder buyer agreement is admitted by the respondent. Said builder buyer agreement is binding upon both the parties. As such, the respondent is under an obligation to hand over possession on the deemed date of possession as per agreement and in case, the respondent failed to offer possession on the deemed date of possession, the complainant, on demand, is entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

- (iv) Respondent has averred 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 complainant against the financial institution and the payments made by the complainan 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.

- (v) Case was heard at length on 17.01.2023 and after hearing the parties, complainant was directed to submit a statement issued by concerned bank depicting the total amount of loan availed by him, also whether loan has been fully repaid or not and if not, how much amount is outstanding against complainant. If loan has been fully repaid by complainant, he shall submit a copy of no objection certificate issued by bank. In compliance to above mentioned directions, complainant has submitted certain documents on 17.01.2023. Perusal of said documents reveals that complainant had availed a bank loan of ₹21,56,784/- and entire loan has been repaid by him.
- (vi) The matter was again heard today. Learned counsel for the complainant stated that since project is not complete and respondent is not in a position to hand over the possession of the flat in near future, complainant wish to withdraw from the project, therefore the entire amount deposited by him may be refunded along with interest. This issue with regard to right to seek refund where possession has not delivered as per agreement for sale has been settled by Hon'ble Supreme Court

in the matter of "Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others " wherein Hon'ble Apex Court has highlighted that the allottee has an unqualified right to seek refund of the deposited 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 contingencies 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.

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(vii) In regard to reliefs claimed by the complainant (mentioned in Para 7 (i) to Para 7(viii) of this order), it is observed that due date of offering possession was 2011. Already delay of approximately 12 years has taken place. The innocent allottee who has invested his hard earned money, availed bank loan with a hope, dream to own a house cannot be made to wait endlessly. The complainant has fulfilled his part of the obligation and as evident, it is the promoter who has failed in performing its obligation to hand over the unit within the time stipulated by it in the agreement to sale. 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 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.

(viii) Complainant is also seeking compensation for mental and physical agony along with legal expenses. 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

22. Complainant in the present case has made down payment of ₹4,16,181/- and a bank loan of ₹21,56,784/- was got disbursed from ING Vysya 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 complainant an amount of ₹4,16,181/- 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 ₹10,92,054/- as per detail given in the table below:

S.No.	Principal Amount paid by complainant	Date of payment	Interest Accrued till 22.03.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANT
1.	₹1,38,500/-	31.12.2007	₹2,25,784/-	₹3,64,284/-
2.	₹1,15,897/-	29.01.2008	₹1,87,951/-	₹3,03,848/-
3.	₹1,50,000/-	29.01.2008	₹2,43,256/-	₹3,93,256/-
4.	₹11,784/-	04.04.2008	₹18,882/-	₹30,666/-
Total	₹4,16,181/-		₹6,75,873/-	₹10,92,054/-

- (ii) To refund the complainant amount of EMIs paid by him to bank from his own pocket and were not reimbursed by respondent (as per terms of EMI agreement executed between them), which as per complainants worked out to ₹17,14,167/-, 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.

Complainant will make demand for payment of these amounts duly supported by bank statements in respect of 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.

- (iii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

23. 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]