



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1532, 1545 of 2022
Date of filing:	18.07.2022
Date of first hearing:	27.09.2022
Date of decision:	09.05.2023

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

Sr. No.	Complaint No.	Complainant
1.	1532 of 2022	Parikshat Mehdudia, S/o Mr. K.K. Sood, R/o A-3/606, Printers Apartment, Sector -13, Rohini Delhi-110085
2.	1545 of 2022	Rahul Mehdudia, S/o Mr. K.K. Sood, R/o A-3/606, Printers Apartment, Sector -13, Rohini Delhi-110085

VERSUS

Parsvnath Developers Limited
Through Its Director /Managing Director
Having Its Registered Office At:-
Parsavnath Tower Near Shahdara Metro Station,
Shahdara Delhi East Delhi, 110032

....RESPONDENT(S)

had

CORAM: **Dr.GeetaRathee Singh** **Member**
NadimAkhtar **Member**

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

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

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaints dated 18.07.2022 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., "Parasvnath City, Sonapat". Therefore, Authority by passing a common order shall dispose of both the captioned complaints. Complaint No. 1532 of 2022 titled Parikshat Mehdudia



versus Parsvnath Developers Ltd. has been taken as a 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. 1532 of 2022

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Parsvnath City, Sonepat
2.	Date of application by original applicant	12.02.2005
3.	Unit No.	B-3218, B Block
4.	Unit area	402 sq. yards (Pg-9 complaint)
5.	Date of endorsement in favour of complainant	28.04.2007
6.	Date of builder buyer agreement	12.04.2011
7.	Total sale consideration	₹21,10,500/-
8.	Amount paid by complainant	₹27,28,575/-
9.	Offer of possession	Not made



B. FACTS OF THE COMPLAINT

4. The case of the complainant is that in February 2005, Smt. Prem Lata Sood (mother of the complainant), the original allottee booked a residential plot measuring 402 sq. yards in a township named 'Parsvnath City, Sonapat' under 'Present and Future Scheme' launched by respondent company at Sonapat, Haryana by paying booking amount of ₹5,25,000/- to the respondent. Vide letter dated 04.01.2006, respondent informed the original applicant that a residential plot will be shortly allotted to her in their proposed township at Sonapat and in order to enlist her name in priority for allotment, she was required to pay another sum of 5,25,000/- by 19.01.2006 and same was paid by her on said date. Copies of payment receipts have been annexed as Annexure C-6 page 42-43 of complaint.
5. Thereafter, for financial reasons the booking was endorsed in the name of the complainant (son of original applicant) and endorsement in his favour was made on 28.04.2007. Copy of the letter dated 28.04.2007 has been annexed as Annexure C-2 with the complaint. The complainant has paid a sum of ₹27,28,575/- to the respondent till date against basic sale price of ₹21,10,500/-.
6. That for several years, the complainant herein received no response from the respondent even after the payment of allotment money and other installments. The complainant was very much stressed and

had

aggrieved, as respondent had not issued any allotment letter and was not even agreeable to sign the plot buyer agreement even after receiving sufficient consideration. The complainant protested with the respondent and finally on 06.04.2011, the respondent issued an allotment letter in the name of the complainant. The copy of the allotment letter dated 06.04.2011 has been annexed as Annexure C-3 with the complaint.

7. It has been alleged that the terms of the allotment letter dated 06.04.2011 did not permit the complainant to modify/amend/delete/add to the terms of the agreement. The complainant, having already made the payment of more than ₹10 lakh was in no position to argue with the respondent company, which had drafted and constructed a one-sided and arbitrary agreement. So, complainant was left with no other option but to sign the papers on the dotted lines. Hence, plot buyer agreement was executed between the parties on 12.04.2011 for plot bearing no. B-3218. Block -B, admeasuring 402 sq. yards. Copy of plot buyer agreement has been annexed as Annexure C-4 with the complaint.
8. At the time of the application/registration, the complainant was promised the possession within a fixed time frame of 36 months but for several years the respondent did not come forward to sign the agreement. There is no promised date of possession as to when the



respondent shall deliver the possession of the plot. Although, the respondent and its officials had orally assured the complainant that the possession of the unit will be delivered within a period of 3 (three) years and the work is in full progress. i.e by April 2014.

9. The plot buyer agreement dated 12.04.2011 is one sided, unilateral and arbitrary. The agreement does not stipulate any date of possession of the plot nor does it provide any provision for the compensation of the complainant in case of delay in the completion of the project. Whereas, in case of delay in payment of installment, the respondent has entitled itself to charge 24% interest p.a. The agreement is completely one sided and only takes care of the interests of the respondent company.
10. That such unilateral and one-sided agreements have often been criticized and set aside by the Hon'ble Apex Court and other tribunals and commissions in the country and are considered abuse of dominant position and an act of unfair trade practices by the developers.
11. The complainant has been awaiting possession of the unit/plot for more than eight years from the deemed promised date of possession. Further the booking of the plot was made in 2006 and today it is more than 18 years but there is no sign of development of the township and delivery of the plot.



12. The complainant has inspected the webportal of the DTCP Haryana and till date the respondent company has not received the occupancy certificate in respect of the mentioned project. This Hon'ble Authority while deciding a similar matter has held the respondent guilty of deficiency in services and awarded upfront delay penalty with monthly prescribed rate of interest. The copy of order dated 13.10.2021, as passed by this Hon'ble Authority in the Complainant No. 865 of 2020 titled as Deepak Gupta Versus Parsavnath Developers Ltd. has been annexed as Annexure C-6 with the complaint.
13. The possession of the unit has been due since April 2014 but till date the respondent company has not communicated any reasons for the delay in the delivery of the unit. It is clear that the delay is deliberate, malafide, intentional in nature. It could be the reason that the respondent company has siphoned off the fund to some other project while depriving the complainant of the possession of his unit.
14. It has been submitted that the conduct of the respondent company is deficient and unfair in nature. Firstly, they have failed to offer legal and actual possession of the unit to the complainant despite delay of more than eight years from the deemed date of possession and 18 (eighteen) years from the date of booking. Secondly, they have got the complainant to execute one-sided and unilateral agreement, the action



which amounts to unfair trade practice. Furthermore, they have been deficient in failing to issue regular updates of the construction. Hence, present complaint has been filed.

C. RELIEF SOUGHT

15. The complainant in his complaint has sought following reliefs:-
- (i) Pass an order directing the respondent company to deliver the immediate legal possession of the plot/unit bearing no. B-3218, Block-B, admeasuring 402 sq. yards located at project - Parsvnath City, Sonepat to the Complainant upon receipt of the completion certificate and completion of all the amenities as per the plot buyer agreement dated 12th April 2011; and
 - (ii) Pass an order directing the respondent company to execute the conveyance deed/sale deed in respect of the mentioned plot/unit in favour of the complainant after its completion and development; and
 - (iii) Pass an order directing the respondent company to make the payment of the delay penalty at prescribed rate of interest as per the Act to the complainant from the due date of possession until the actual delivery of the unit; and
 - (iv) Pass any order that the Hon'ble Authority deems fit.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 08.05.2023 pleading therein:

16. The present complaint is not maintainable as the relief prayed by the complainant does not fall within the jurisdiction of this Hon'ble Authority. The project is not registered with this Authority and therefore, this Authority does not have jurisdiction to entertain the claim of the complainant.
17. The complainant is well aware of the facts that the project proposed by the respondent company has been stalled and is beyond the control of the respondent company to develop the same. In these circumstances, the relief sought in the present complaint is neither maintainable nor can be granted. Therefore, it is respectfully submitted that alternate relief as stipulated under the Act that is, relief for refund may kindly be granted in the present complaint.
18. Present complaint pertains to an un-registered project of the respondent therefore, in view of the latest judgment by Hon'ble Supreme Court in the case Newtech Promoters and Developers Pvt. Ltd. Versus State of U.P. and others (2021) SCC Online SC 1044, this Hon'ble Authority would not have the jurisdiction to entertain the present complaint filed under the Real Estate (Regulation and Development) Act, 2016.



19. 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 do 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, her claim should be dismissed.
20. The provisions of the RERA Act cannot be applied retrospectively.
21. In April 2011, complainant had been allotted residential plot bearing no. B-3218 having area admeasuring 402 sq. yards in the township 'Parsvnath City, Sonapat' at basic sale price of ₹21,10,500/-. Complainant had executed the plot buyer agreement on 12.04.2011.
22. Complainant has deposited a sum of ₹27,28,575/- including basic sale price, EDC and IDC till date to the respondent company.
23. The original allottee was duly informed about non-payment of installments or having committed default in making the payments of installments/overdue repeatedly through various reminders dated



19.07.2012 & 15.12.2012. It is pertinent to state that in spite of the fact that the complainant had been sent many reminders letters regarding the overdue payment, the complainant neither replied nor paid the overdue amounts to the respondent with respect to the said booking. It is submitted that the complainant had been chronic defaulter in making timely payments. Copy of reminder/overdue letter is enclosed herewith as Annexure-R-3(Colly).

24. The complainant is bound by the terms and conditions of plot buyer agreement executed between the parties.
25. On 10.07.2010, respondent company applied for LOI for the land admeasuring 51 acres. However, the same was rejected by competent authority (DTCP) vide letter dated 19.02.2013. Pursuant to that, on 19.09.2019, one of the association company of the respondent company applied for license of the land admeasuring 25.344 acres falling under in the revenue village Rajpura, Sector 10 and 11, Sonapat, Haryana, to develop a residential plotted colony.
26. Respondent company could not get the LOI for the development of the land due to various reasons, which are enumerated as under:
 - (i) The inability of the respondent company to develop the project is primarily the encroachments by the local farmers on the part of the project land for which they have already been paid the sale consideration. It has been submitted that despite all sincere



efforts to get the project land vacated, the local farmers have failed to agree and rather they are coercing the respondent company to agree to their unreasonable demands.

- (ii) That, further, with effect from 11.01.2022, Government of Haryana has taken a policy decision that where the outstanding dues against the statutory dues in the nature of EDC etc are more than 20 crore, fresh license should not be issued to the landowner/developer/its associate companies etc. till the clearance of all the outstanding EDC. Hence, despite marketing all sincere steps, respondent company is not able to get the LOI of the said project land.
- (iii) An application has been submitted for grant of license for 25 acres through Generous Builders Private Limited, however, said application is also not being considered by the Authority and a considerable time has already lapsed.
- (iv) Despite all efforts made by the respondent company towards the completion of the said project as well for getting LOI, the project could not be regularized.

27. That for the reasons beyond the control of the respondent company, it could not develop the land in question and it is ready and willing to refund the amount received from the complainant in terms of clause 5 (b) of the buyer's agreement and the prayer in the complaint for



performance of contract is untenable in law and in any case, the relief as prayed for in the complaint cannot be granted by this Hon'ble Authority. Clause 5 (b) of the plot buyer's agreement is reproduced hereunder:

"Clause 5 (b):- In case the plot gets omitted/deleted from the layout plan or the Promoter is not able to deliver the same to the Buyer for any reason other than those relating to acquisition of land as mentioned in Clause 6, the Promoter may offer another plot in the Colony or in its vicinity, if available, and if the same is not acceptable to the Buyer, then the Promoter shall be liable only to refund the actual amount received by it with simple interest@10 % per annum and the Promoter shall not be liable to pay any compensation whatsoever".

28. Further, since the land in question could not be developed into a real estate project and is not registered with this Hon'ble Authority and as such, it has no jurisdiction to entertain and adjudicate the present Complaint.

**E. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT**

29. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for the respondent argued that respondent has not received LOI for the project and is not in a position to develop the project and offer the possession of plot booked by the complainant. She also stated that none of the allottees have been given possession by respondent in project in question. Further in a situation where respondent is unable to develop the project and offer possession



to the allottees, the only relief admissible is refund with interest. Therefore, she requested that refund be allowed instead of awarding possession with delay interest.

F. ISSUES FOR ADJUDICATION

30. Whether the complainant is entitled to relief of possession of plot booked by him 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

31. 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 cases 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 fulfill 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) Respondent has also raised an objection that the 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 judgment 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 complainants are entitled to delay interest at prescribed rate u/s 18(1) of RERA Act.

- (iv) The complainant in the present case had booked a plot bearing no. B-3218 in the project of the respondent. Upon careful examination of builder buyer agreement executed between the parties on 12.04.2011, it has been revealed that terms and wordings of said builder buyer agreement are exactly the same as of builder buyer agreement executed between the parties on 08.10.2012 in complaint case no. "865 of 2020 titled as Deepak Gupta versus M/s Parsvnath Developers Ltd." Moreover, the complainant in complaint case no. 865 of 2020 was allotted plot bearing no. B- 3305, Block B, Parsvnath City, Sonapat and complainant in present case has been allotted plot bearing no. B-3218, Block B, Parvsnath City, Sonapat, meaning thereby, the booking of plots made by complainants in both the complaints was made in "B Block" of same project i.e. Parsvnath City, Sonapat. So, it is observed that the factual



matrix of present case is similar to bunch of cases with lead case Complaint no. 865 of 2020 titled as **“Deepak Gupta versus Parsvnath Developers Ltd.”** Accordingly, Authority is satisfied that issues and controversies involved in present complaints are of similar nature as complaint case no. 865 of 2020. Therefore, captioned complaint is disposed of in terms of the orders passed by the Authority in **Complaint no. 865 of 2020 titled as Deepak Gupta versus Parsvnath Developers Ltd.** Relevant observations made in complaint no. 865 of 2020 are reproduced below for reference:

“4. After hearing both the parties and in view of facts and circumstances of the cases, Authority observes and orders as follows:

(i) All complainants in the bunch of above titled cases have sought possession of the units which they had booked during the years 2004 to 2011 in the respondent's project named 'Parsvnath City, Sonapat'.

(ii) As has already been discussed in the previous orders of this Authority, respondent executed builder buyer agreements in the favour of the complainants after collecting massive amount ranging from ₹30-50 lac but failed to complete the project and deliver the possession to the complainant allottees.

(iii) The plea raised on behalf of respondent in the course of earlier hearings was that he is at advanced stage of getting Letter of Intent (LoI) for the project and would complete the same in due course of time. However, Authority with a view to determine whether or not alternative units were available with the respondent for delivering to the complainants in his other projects situated at Sonapat, had directed the respondent to furnish



certain information vide order dated 28.09.2021 but he has miserably failed to furnish said information.

(iv) In given situation, complainants have today submitted that they do not want to withdraw from the project and are ready to await delivery of possession after its completion but in the meanwhile, may be awarded upfront compensation. Such prayer of the complainants deserves to be allowed in view of the provisions of Section 18 of RERA Act which provides that in case allottee does not wish to withdraw from the project which the promoter could not complete on time, concerned promoter in that eventuality is liable to pay interest to the allottee for every month of delay till the handing over of the possession, at such rate as may be prescribed. So, Authority accepts the complainants prayer and directs the respondent to pay each complainant upfront delay interest on the amount already paid by respective complainant allottee from deemed date of possession till the date of this order and also future interest for every month of delay occurring thereafter till the handing over of possession, at the rate prescribed in Rule 15 of the HRERA Rules, 2017 i.e. SBI MCLR+2% which as on date works out to be 9.30% (7.30%+2.00%). Further respondent is prohibited from alienating the land of the project in question for any purposes except for completion of the project.”

- (v) In complaint case no. 865 of 2020, it was revealed that respondent neither had license to develop the project nor even LOI was obtained by him for the same. In that eventuality, since complainants were not interested to withdraw from the project and wanted to continue with the project, respondent was directed to pay the complainant upfront interest on the amount paid by him from deemed date of possession till date of the order and also future interest for every month of delay occurring

thereafter till the handing over of possession of the plot. Further respondent was prohibited from alienating the land of the project in question for any purposes except for completion of the project.

In the present complaint also the complainant wishes to continue in the project and in his complaint had prayed for directions to the respondent to hand over the possession of the plot of 402 sq. yards in Parsvnath City upon receipt of completion certificate along with interest on the amount paid from the due date of possession till the actual delivery of the unit at prescribed rate of interest. It is further observed that though the learned counsel for respondent has argued that the respondent has not received the LOI for the project and is not in a position to develop the same and offer possession of the booked plot to the complainant, however no document issued by competent authority has been placed on record or relied upon by the respondent to prove that it has surrendered/abandoned the project. Therefore, the complainant U/s 18(1) of the RERA Act is entitled to the relief of interest on account of delayed possession.

Accordingly, complainant in the present case is also entitled to upfront interest on the amount paid by him from



deemed date of possession till today along with future interest for every month of delay occurring thereafter till the handing over of possession 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%).

- (vi) It is pertinent to mention that time for delivery of possession has not been stipulated in the builder buyer agreement. This Authority has been consistently observing in earlier decided cases where no timeline has been prescribed in builder buyer agreement that the deemed date of possession shall be reckoned as three years from the date on which builder buyer agreement was executed. Thus calculated, deemed date of possession in the present both complaints will be **11.04.2014**.
- (vii) Authority has got delay interest calculated from its account branch in terms of the observations made by Hon'ble Haryana Real Estate Appellate Tribunal vide its order dated 10.01.2023 in appeal no. 619 of 2021 titled as Parminder Singh Sohal versus BPTP Ltd. The details of amounts paid by the complainants and delay interest calculated on said amounts are shown in the following table: -



S.No.	Complaint No.	Amount paid by complainants	Upfront delay interest calculated by Authority till 09.05.2023	Further monthly interest
1.	1532 of 2022	₹27,28,575/-	₹26,52,414/-	₹23,997/-
2.	1545 of 2022	₹23,23,237/-	₹22,58,390/-	₹20,432/-

H. DIRECTIONS OF THE AUTHORITY

32. Hence, the Authority hereby passes this common order in the captioned complaints and issues following directions under Section 37 of the Act:

- (i) Respondent is directed to pay the complainants upfront amount of ₹26,52,414/- and ₹22,58,390/- in complaint case no. 1532 of 2022 and 1545 of 2022 respectively. Respondent's liability for paying monthly interest of ₹23,997/- and ₹20,432/- as shown in above table will commence w.e.f. 10.06.2023 and it shall be paid on monthly basis till valid offer of possession is made to complainants.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development)



Rules, 2017 failing which legal consequences would follow.

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


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


.....
NADIM AKHTAR
[MEMBER]

