



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	3248 of 2022
Date of filing:	23.12.2022
Date of first hearing:	02.03.2023
Date of decision:	30.05.2023

1. Mrs Jyoti Aggarwal, W/o Shri Rahul Aggarwal,
R/o House No. 20, Sector 11, HUDA, Panipat, Haryana
2. Mr. Rahul Aggarwal, S/o Shri Raj Kumar Aggarwal,
R/o House No. 20, Sector 11, HUDA, Panipat, Haryana

....COMPLAINANT(S)

VERSUS

M/S Parsvnath Developers Ltd. through its chairman-cum- Managing Director having its registered office at 6th Floor, Arunachal Building, Barakhamba Road, New Delhi and also at Parsawnath Metro Tower, Near Shahdara Metro Station, Shahdara, Delhi-110032.

....RESPONDENT(S)

CORAM:

Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Present: - Mr. Abhay Jain, learned counsel for the complainant through VC
Ms. Isha Janjua, proxy counsel for the respondent

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed on 23.12.2022 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 fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS:

The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over possession, delay period, if any, have been detailed in the following table:

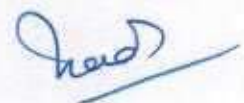
S.N.	Particulars	Details
1.	Name of the project	Parsvnath Paliwal City, Panipat
2.	Location of the project	Sector 38-39 Panipat
3.	Nature of the Project	Residential site/building
4.	RERA Registered/not registered	Registered
5.	Unit no.	A-097, Block A
6.	Unit area admeasuring	2240 sq. ft
7.	Date of booking	11.08.2008
8.	Date of Villa-buyers Agreement	10.01.2015
9.	Deemed date of possession	10.01.2017



		<p><i>"The Developer shall endeavour to complete the construction of the Villa within a period of twenty four (24) months from the date of commencement of construction of the Individual unit, after receipt of sanction of building plans/revised building plans and other approvals of concerned authorities as may be required, and subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the Developer and subject to timely payments by the Buyers. For the purposes of this clause/agreement the date of submission of application with the competent authority for obtaining completion certificate in respect of internal development of the Colony shall be reckoned as the date of completion of development of the Colony. No claim by way damages/compensation shall lie against the developer in case of delay in handing over possession on account of any of the said reasons and the Developer shall be entitled to reasonable extension of time for completion of either Villa."</i></p>
10.	Basic Sale Price	41,76,000/-
10.	Amount paid by the complainants	12,00,000/-
12.	Delay in handing over of possession from the date of construction	More than 14 Years

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

2. That the complainant had booked a Villa in a residential colony namely "Parsvnath Royale Villas Panipat" and paid ₹4,00,000/- as booking amount



by cheque no. 089474 dated 04.08.2008. On 11.08.2008, respondent has issued Receipt No. S0079166 to the complainants and allotted Villa-A097 to them. Copy of the receipt dated 11.08.2008 issued by the respondent is annexed as Annexure-01. The Basic sale price for the said villa was Rs 41,76,000/-. The complainants opted for the construction linked payment plan and paid a total amount of Rs 12,00,000/- as and when demanded by the respondent till March 2011. Copy of the customer ledger is annexed as Annexure -02. However, villa buyers' agreement was not executed between the parties till 2011. Thereafter, in the year 2012, complainants met the officials of the respondent to enquire about the status of the Villa and got to know that construction of the Villa is not complete. Executive of the respondent promised that the construction works would be completed by May,2012 and possession would be delivered in the same month. Complainant, visited the branch office of the respondent to enquire about the status of the villa and were surprised to know that the construction of the Villa was still not complete. Consequently, complainant sent a legal notice dated 1st June,2012 through their advocate to the respondent for not complying with the obligation of delivering the possession of the Villa on time as well as to pay delay possession interest to the complainants. However, even after sending a reminder to the legal notice on 09.08.2012, respondent took no action and did not bother to reply



to the legal notice sent by the complainant. A copy of the legal notice dated 1st June,2012 is annexed as Annexure-03.

3. Aggrieved by the illegal and fraudulent actions of the respondent, the complainants filed a complaint against the Parsavnath Developers limited before the Permanent Lok Adalat, Panipat on 20.12.2013, wherein it was directed that the respondents would receive the interest @12% per annum from the complainants on the balance amount and that the possession of the villa would be handed over to the complainants within 9-12 months on depositing the entire balance amount. The relevant part of the order dated 28.11.2014 is reproduced below:

"Hence, in view of these statements, the application is hereby disposed of with the direction to the respondents that they would receive the interest @ 12% per annum from the applicant on the balance amount and that the possession of the Villa would be handed over to her (applicant) within 9 to 12 months on depositing the entire balance amount. The documents of loan would be handed over to the applicant by the respondents as soon as possible. Both the copies of agreement have been obtained by the respondents from the applicant and her husband Rahul Aggarwal. After obtaining the signatures competent copy of agreement be sent to the applicant after it is signed by the competent person of the company. The applicant is also directed to deposit the balance amount with the respondents company for obtaining all the benefits given in the agreement after she avails of the amount of loan."

Copy of the Order dated 28th November, 2014 passed by the Permanent Lok Adalat for Public Utility Services, Panipat is annexed as Annexure-04.



4. In compliance of the directions of the order dated 28.11.2014, a copy of the signed Villa buyer's agreement dated 10.01.2015 was provided by the respondent to the complainants. Copy of Villa Buyer Agreement is annexed as Annexure 05.
5. That as per Clause 8 (a) of the Villa buyer's agreement, possession of the unit was to be delivered within a period of 24 months from the date of commencement of construction of the individual unit, after receipt of sanction of building plans. Accordingly, possession was supposed to be delivered by the year 2017.
6. That Permanent Lok Adalat vide order dated 28.11.2014 had directed to the respondent to help the complainants in availing loan and provide all documents necessary for sanctioning loan to the complainants. The complainants were also directed to deposit the payment of the entire balance amount with the respondent after availing the loan amount. Instead of providing the necessary documents for sanctioning loan for the Villa, the respondent via mail dated 27.04.2016 issued a demand notice to the complainants and demanded payment for the overdue amount of ₹24,45,039.44/-for the Villa of the complainants. The copy of the demand notice dated 27.04.2016 sent by the respondent via email is appended as Annexure-06.
7. The complainants made various efforts to avail loan from various banks and financial institutions but faced rejections as the project of the

respondent did not have proper approvals from the competent authorities. The complainants time and again approached the respondent to provide the documents to Punjab National Bank for loan disbursement but the respondent did not provide the necessary documents to the bank and the loan sanction validity of 90 days expired. Thus, the loan was not disbursed and the complainants could not make the payment of the entire balance amount to the respondent. The respondent neither complied with orders passed by the permanent Lok Adalat nor refunded the deposited amount of ₹12,00,000/- along with interest to the complainants.

8. The respondent kept the Complainants in dark about the actual status of the construction of the Villa bought by the Complainants. The respondent kept telling the Complainants that the Villa would be ready as per the commitments and the promises made to the Complainants. The respondent kept raising demands but the construction activities were not visible at the Project site. The respondent never cooperated with the Complainants for the loan sanction and also failed to provide the necessary documents for the loan sanction till date. That is why, the complainants could not make payment of the balance amount of Villa to the Respondent.
9. That project was not completed even after the lapse of more than 14 years from the date of booking in August,2008 and the respondent has failed to offer the possession of the Villa to the complainants till date.

had

10. The complainants approached the respondent and requested for refund of their deposited amount with interest on numerous occasions but to no avail.
11. That, even after a delay of more than fourteen years from the date of booking till date, the respondent has failed to take any remedial measures and has not refunded the deposited amount with interest, which has ultimately resulted in causing hardships and difficulties for the complainants.
12. The complainants intend to withdraw from the project. Therefore, the complainants seek the complete refund of their deposited amount along with interest at the prescribed rate for inordinate delay caused due to complete failure of the respondent.

C. RELIEF SOUGHT

13. In view of the premise explained hereinabove, it is most respectfully prayed that the Authority be pleased to grant the following reliefs: -
 - i.) Direct the respondent to refund full amount deposited by the Complainants amounting to ₹ 12,00,000/- with interest, from various dates on which the amount was taken from the Complainants till the amount is returned at the rate prescribed by the Act, 2016.
 - ii.) Direct the respondent to pay legal expenses of Rs. 1,00,000/- (Rupees One Lakh) incurred by the Complainants for filing and pursuing the instant case.



iii.) Any other damages, interest and 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 29.05.2023 pleading therein:

14. That the present Complaint is liable to dismissed as the Villa Buyer Agreement was executed in the year 2015, before the Real Estate (Regulation & Development Act), 2016 came into force. Therefore, the provisions of RERA Act are inapplicable to the present agreement. The RERA Act cannot be said to have retrospective application and impose limits, retrospectively.
15. That the complainants have not disclosed the facts and concealed that they defaulted in making timely payments.
16. 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 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, his claim should be dismissed.

17. That, complaints had booked a villa in the project of the respondent on 11.08.2008 and Villa buyers' agreement was executed between the parties on 10.01.2015. The basic sale price of the Villa was fixed at 41,76,000/- and complainants had opted for the construction linked plan.
18. That various reminder letters 12.07.2014, 22.07.2014, 27.04.2016, 06.05.2016, 23.05.2016, were sent to the complainants regarding the payment of over dues of Villa No. A-097, but the complainants never replied to the reminder letter nor did they clear their dues. That due to the default in making payment by the complainants and other buyers, the project got affected and the development/construction of the project was delayed. Copies of reminder letters dated 12.07.2014, 22.07.2014, 27.04.2016, 06.05.2016, 23.05.2016 are annexed as Annexure-R-2.
19. That on 07.06.2016, final reminder was sent to the complainant to clear the due of an amount of ₹ 24,45,039/- on or before 14.06.2015, failing which the respondent shall be constrained to cancel the allotment which was booked by them. Copy of the letter dated 07.06.2016 is annexed as Annexure R-3. The complainants defaulted in making the payments, in resultant to which respondent has cancelled the allotment of the unit. The

respondent vide its letters dated 18.06.2016, 31.08.2016 and 11.08.2017 sent through registered AD to the complainant intimated that he has cancelled the allotment of the residential unit and 15% of the basic cost of the earnest money i.e. 6,23,400/- has been forfeited. The balance payable to the complainant is ₹ 5,76,000/-. Copy of the cancellation letter is annexed as Annexure R-4.

21. The developer has planned to develop the Project land into residential colony and laid out plots of various sizes in the colony as per layout approved by DTCP, Haryana. The land owners had obtained licence from DTCP, over an area measuring 162.48 acres for setting up of residential plotted colony. An application for renewal of licence no. 163 to 171 of 2007 was submitted before the DTCP on 04.04.2019 and it was renewed on 09.07.2019.
22. That there is no intentional delay on the part of the respondent company and the project has been delayed beyond the control of the respondent company.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

23. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainants submitted that complainants are seeking refund of the amount deposited by them along



with interest on account of delay caused in handing over the possession.

Proxy counsel for the respondent on the other hand submitted that Villa buyers' agreement was executed between the parties on 10.01.2015 and the complainants had opted for the construction linked plan. However, complainants have defaulted in making timely payments due to which the project got delayed. Various reminders letters were issued to them for making payment between 2014-2016, but complainants never replied to the reminder letters and had not paid the amounts as stipulated in the payment schedule. She further submitted that a final reminder letter was also send to the complainants on 07.06.2016 and it was informed that if complainants failed to clear the dues, respondent promoter would cancel the allotment of the booked unit as per clause 5(a) of the Villa buyer's agreement. Complainants have not cleared the dues in time. Thus, respondent has cancelled the allotment of the unit and 15% of the basic cost, i.e., earnest money was deducted as per the agreement.

F. ISSUES FOR ADJUDICATION

24. Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?



G. OBSERVATIONS AND DECISION OF THE AUTHORITY

25. In light of the background of the matter, Authority observes as follows:
- (i) As per the averments of respondent, 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 builder-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 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 in 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.

(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 Villa to the complainants, the cause of action is re-occurring till date and the ground that complaint is barred by limitation stands rejected.



(iii) Respondent has admitted basic facts of the matter that a Villa-buyer agreement was executed in the year 2015. Against total consideration of Rs. 41,76,000/-, an amount of Rs. 12,00,000/- has already been paid which has been duly acknowledged by way of receipts as well as in their written statements.

(iv) As per the terms of the Villa-buyer agreement dated 10.01.2015, possession of the villa was supposed to be delivered within 24 months which means possession should have been delivered by 10.01.2017.

(v) The complainants had booked a villa in the project of the respondent in 2008. She made the payment of sum of ₹ 12,00,000/- till March 2011. However, an offer of possession has still not been made even after lapse of 14 years from the date of booking. Such an inordinate delay tantamount to complete breach of an agreement. Such huge delay defeats the very purpose of booking a villa and no reasonable cause for such huge delay has been presented by the respondent.

vi) Respondent has taken a stand that the complainants have opted for the construction linked plan and they have defaulted in making the timely payments to the respondent, resultant to which the respondent has cancelled the unit of the complainant and forfeited the amount of Rs 6,24,000/-, i.e., 15% of the earnest money as per the terms of the agreement. It was observed that complainants had opted for the construction linked payment plan which means the payments were

supposed to be made as and when the construction of the project moves ahead. However, after the booking, no construction has been carried out as per the agreed plan, therefore, complainant had not paid any further payments. Further, respondent failed to communicate the complainant with regard to the status of the construction of the project. The construction of the project is still in question. Therefore, it cannot be expected from the complainant to pay the remaining amount when they are not aware about the status of the construction. Thus, the cancellation and forfeiture of 15% of the earnest money totally stands arbitrary and illegal. Such cancellation cannot be sustained in the eyes of law as it is respondent who is at fault for failure in constructing the project.

(vii) Since inordinate delay has already been caused of more than 14 years and project is nowhere near its completion, the allottees cannot be expected to wait endlessly for taking possession of the allotted unit for which they have paid a considerable amount towards the sale consideration. It had been as observed by the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors, and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others (Supra) which is reproduced as below:-

25. The unqualified right of the allotter to seek refund referred Under Section 18(1)(0) 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 on 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”.

26. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Therefore, Authority finds it to be a fit case for allowing refund in favour of complainants. As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The 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 cost of 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".

27. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e., 30.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.70%.

28. Accordingly, respondent will be liable to pay the complainants interest from the dates amounts were paid by them till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainants the paid amount of ₹ 12,00,000/- 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 the total amount along with interest at the rate of 10.70% till the date of this order and said amount works out to ₹ 17,21,235 /- as per detail given in the table below:

Sr. No.	Date of payments	Amount paid by the complainant	Interest accrued till 30.05.2023	Total Amount payable to the complainant
1.	11.08.2008	₹ 4,00,000/-	₹ 6,33,909/-	₹ 10,33,909/-
2.	22.01.2010	₹ 2,00,000/-	₹ 2,85,939/-	₹ 4,85,939/-
3.	16.02.2010	₹ 1,00,000/-	₹ 1,42,237/-	₹ 2,42,237/-
4.	16.11.2010	₹ 1,00,000/-	₹ 1,34,234/-	₹ 2,34,234/-
5.	24.02.2011	₹ 1,00,000/-	₹ 1,31,302/-	₹ 2,31,302/-
6.	24.02.2011	₹ 1,00,000/-	₹ 1,31,302/-	₹ 2,31,302/-
7.	01.03.2011	₹ 1,00,000/-	₹ 1,31,156/-	₹ 2,31,156/-
8.	01.03.2011	₹ 1,00,000/-	₹ 1,31,156/-	₹ 2,31,156/-
	Total	₹ 12,00,000/-	₹ 17,21,235/-	₹ 29,21,235/-

Further, the complainants are seeking the litigation cost of Rs. 1,00,000/- for filing the instant case. 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 are advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

DIRECTIONS OF THE AUTHORITY

30. 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) Respondent is directed to refund the entire amount of ₹ 12,00,000/- along with interest of ₹ 17,21,235/- to the complainant. The total amount payable to the complainant comes out to ₹ 29,21,235/-.
- (ii) Respondent is directed to make entire payment to the complainants as depicted above within 90 days from the date of this order, as provided



in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

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



.....
DR GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

