



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2910 of 2022
Date of filing:	16.11.2022
Date of first hearing:	01.02.2023
Date of decision:	03.05.2023

Vikram Bansal s/o Late Sh. H.P Bansal

R/o House no. 2382-T-29/2, Narela Mandi Extension,

Narela, New Delhi-110040

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd. through its Managing Director

Office: Parsvnath Tower, Near Shahdara Metro Station,

Shahdara, Delhi- 110032 and Corporate Office at 6th Floor,

Arunachal, 19, Barakhamba road, New Delhi- 110001

....RESPONDENT

CORAM:

Dr. Geeta Rathee Singh

Nadim Akhtar

Member

Member

Geeta Rathee

Present: - None for the complainant

Ms. Isha Janjua, proxy counsel for the respondent through video conference

ORDER (DR. GEETA RATHEE SINGH-MEMBER)

1. Present complaint has been filed on 16.11.2022 by complainant 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 complainant, date of proposed handing over possession, delay period, if any, have been detailed in the following table:

S.N.	Particulars	Details
1.	Name & location of the project	Present and Future projects Parsvnath City, Sonapat

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2.	Name of the promoter	Parsvnath Developers Ltd.
3.	Flat buyers' agreement	Not executed
4.	Date of application by original applicant	27.09.2004
5.	Unit area	300 sq. yards
6.	Date of endorsement in favour of complainant	20.09.2007
7.	Offer of Possession	Not made

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

3. That complainant has derived his rights from original allottee, namely Mr. Darshan Lal Nagpal who had booked a plot admeasuring 300 sq. yards in a township named 'Parsvnath City' under 'Present and Future Scheme' in the year 2007. The complainant and his pre-decessor in interest had paid the amount of ₹ 6,00,000/- to the respondent till date. Copy of the receipts of the payments issued by the respondent have been annexed as Annexure C-2 to C-7.
4. That as per the terms and conditions of the respondent, the possession of the plot was supposed to be delivered within six months of booking of the plot. However, the possession of the plot was not offered to the complainant till date. The complainant was always willing to pay the rest

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of the amount for the possession of the plot, but respondent did not bother the request of the complainant. Complainant made several requests via telephone or personal meetings; however, respondent has never paid any heed toward the request of the respondent.

5. That respondent has not fulfilled his obligations and breached the trust of the complainant. Hence, aggrieved of the above facts, complainant has filed this present complaint.

C. RELIEF SOUGHT

6. The complainant in this present complaint has sought relief of refund of the amount paid along with interest at the rate of 15% per annum.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 16.01.2023 pleading therein:

7. The present complaint is not maintainable before this Authority for the reason that complainant is not an allottee of the respondent company and the registration was merely an expression of interest towards the upcoming project of the respondent.
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 the 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 and therefore, his claim should be dismissed.

9. That there is no agreement of sale between the parties and therefore relief sought under section 18 of the RERA Act, 2016 is not maintainable before this Authority.
10. That the original allottee at the time of registration was very well aware of the fact that neither any location nor any site of the project was confirmed. The original allottee while filing the application has given an undertaking that in case no allotment is made, she will accept the refund of the amount deposited by him towards its registration. A copy of the application form dated 27.09.2004, which is duly signed and executed is annexed as Annexure R-1.
11. That on 31.01.2006, the original allottee Mrs. Bimla Devi endorsed her rights in favour of Mr. Darshan Lal Nagpal after submitting the documents in the office of the respondent company. On 20.09.2007, Mr. Darshan Lal Nagpal endorsed his rights in favour of the complainant. A copy of the endorsement letter dated 20.09.2007 is annexed as Annexure R-2. On 16.08.2007, complainant has signed an affidavit- cum- undertaking and in

the said undertaking it was clearly mentioned that in case the subsequent purchaser is not allotted any plot in new project of the respondent, he shall accept refund of the deposited amount with 9% of simple interest per annum.

12. That complainant has neither paid any consideration after the endorsement in his favour nor respondent has made any demand after the year 2007.
13. That respondent made it clear to the complainant that there was no allotment made in favour of the original allottee as well as subsequent purchaser which was never objected by the complainant.
14. That respondent company has received an amount of Rs 6,37,500/- from the original applicant and subsequent purchaser towards the registration of the application. A copy of customer ledger dated 01.12.2022 is annexed as Annexure R-4.
15. That complainant is bound by the terms and conditions of the application form duly signed by the complainant.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. None appeared on behalf of the complainant. Learned counsel for the respondent stated at her on instructions that respondent is ready to refund the amount deposited by the complainant along with interest.



F. ISSUES FOR ADJUDICATION

17. Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016?

G. OBJECTIONS RAISED BY THE RESPONDENT

18. In the present complaint, respondent has taken certain legal objections with regard to the maintainability of the complaint which are stated as under:

i) The complaint is not maintainable for the reason that complainant is not an allottee as no allotment of unit /plot was done in favour of the complainant or his pre-decessor and the registration was merely an expression of interest towards upcoming project of the respondent.

ii) Relief sought by the complaint under section 18 is not maintainable as there is no agreement of sale executed between the parties.

iii) The present complaint is barred by the limitation.

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY:

19. With regard to the objections raised by the respondent, Authority observes as under:

i) Respondent has averred that the present complaint is not maintainable for the reason that complainant is not an allottee, as no allotment of unit was made in favour of the complainant and the registration was an expression of interest towards the upcoming project of the respondent. For adjudicating upon this, it is important to refer to the definition of "allottee"

as provided in Section 2(d) of the Act. Said provisions are reproduced below for reference:

“Section 2(d): Allottee: in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.”

On bare perusal of the definition of “allottee”, it is evident that the transferee of an apartment, plot or building is an allottee. The mode of transfer may include issuance of booking receipts, issuance of allotment letter. Upon careful perusal of documents on record, it is revealed that the original allottee had paid a sum of ₹1,75,000/- for purchasing a plot admeasuring 300 sq. yards in present and future project of respondent and it was agreed between the parties that respondent shall allot a residential plot to allottee and in case he fails to do so for any reason whatsoever, advance money paid by allottee shall be refunded to her with 10% interest per annum. Thereafter, the plot was transferred in the name Mr. Darshan Nagpal in the year 2006. Mr. Nagpal further paid the amount of 4,25,000/- as an instalment and sum of ₹37,500/- as administrative charges in favour of the project of the respondent namely ‘Parsvnath City Sonapat’ which has been duly acknowledged by the promoter by way of receipt dated 13.09.2007. A copy of the same is annexed as Annexure C-3 of the

complaint file. The fact that the multiple payments were received by the respondent against a 300 sq. yards plot from the pre-decessors of the complainant clearly shows that there was very much an agreement to sell the 300 sq. yards with the pre-decessors of the complaint and therefore, the pre -decessors in interest of the complainant were allottees of the respondent. Subsequently, complainant purchased the rights in 2007 and endorsement in his favour was made by the respondent on 20.09.2007, whereby the complainant stepped into the shoes of the erstwhile allottee. The definition of the allottee as provided under section 2(d) does not distinguish between the original allottee and the subsequent allottee, therefore, there exists no ambiguity with respect to the fact that the complainant who is subsequent allottee is very much falls within the ambit of the definition of allottee. Furthermore, under section 31 of the RERA Act, 2016 “any aggrieved person may file a complaint before the Authority or the A.O, however the complaint can be filed only against the promoter, allottee or the real estate agent. The Act/ section does not say only ‘allottee’, promoter, real estate agent can file a complaint. In the present case, the complainant is aggrieved by the act of non-compliance of this part of the contract by the respondent. Hence, objection of the respondent that complaint is not maintainable stands rejected.

ii) Further, respondent has raised another objection that complaint is not maintainable as there is ‘no agreement to sale’ executed between the

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parties. If this contention of the respondent is accepted, it would imply that respondent, who is into the business of real estate development had accepted multiple payment from the pre-decessors of the complainants and issued receipts for 'nothing in return', is impossible and hard to believe. Mere fact that an allotment letter specifying a unit no. was not issued to original allottee does not mean that she was not an allottee of the respondent. Once respondent has accepted the application form along with multiple payments from complainant's predecessors for purchase of a plot in his project and has agreed to sell the plot as per price mentioned in application form, it was the obligation of respondent to allot her a unit no. within a reasonable time. Failure on his part to do so will not affect the rights of applicant as an allottee. It is observed that the promoter has repeatedly raised demands for a unit and therefore, same cannot be considered as mere 'expression of interest.'

Even an application form which specifies the details of unit such as area of the plot, price and concession in price etc., booked by complainant will be treated as agreement for selling the property. The definition of "agreement for sale" as provided in Section 2(c) means an agreement entered into between the promoter and the allottee. The definition is not restricted to execution of a builder buyer agreement with respect to agreement entered into between the allottee and the promoter before RERA Act of 2016 coming into force. Accepting the payment towards a unit in

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present and future project shows there was a meeting of minds that the promoter will give possession in any present or future project developed by respondent. Furthermore, there is nothing on record to show that the allotment will be by way of any draw, first come first serve basis, or by any other mode and the complainant was denied allotment of a specific unit after following that process. Documents available on record, clearly shows that original allottee Mrs. Bimla Devi booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot' which was subsequently purchased by Mr. Darshan Nagpal and lastly by present complainant. Accordingly, contention of the respondent that there is no agreement to sell has been executed stands rejected. Hence, relief sought by the complainant under the provisions of section 18 of the RERA Act is maintainable.

iii) With respect to the third objection raised by the respondent that the complaint is barred by the limitation, Authority observes that since, the promoter has till date failed to fulfil his obligations to hand over the plot of 300 sq. yards in its project 'Parsvnath City, Sonapat', the cause of action is recurring and the legal objection that complaint is barred by limitation stands rejected.

iv) Further, in light of the background of the matter and the submissions


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made by both parties, Authority observes as follows:

(i) That in this complaint, booking was made in 'present and future' scheme; no agreement has been executed till date; complainant has prayed for relief of refund as he wishes to withdraw from the project in question; respondent has expressed his inability to offer plot to the complainant and is agreeable to refund the amount deposited. For these reasons, a case is clearly made out to allow relief of refund of the paid amount along with interest 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.

Further, Hon'ble Supreme Court in the matter of **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors,** 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 agreed agreement. Para 25 of this judgment is reproduced below:-

25. The unqualified right of the allottee 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

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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”.

(ii) Complainant has sought refund along with interest @18% p.a.

however, as per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. The definition of term ‘interest’ is defined under Section 2(za) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub.sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of india highest marginal 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”.

- (iii) The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
- (iv) Consequently, as per website of the State Bank of India i.e. <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 31.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.70%.
- (v) Accordingly, respondent is held liable to pay the complainant interest from the dates amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR) + 2 % which as on date works out to 10.70% (8.70% + 2.00%) from the date amounts were paid till the actual realization of the amount.

Authority has got calculated the interest on the paid amount of ₹6,37,500/- at the rate of 10.70% till the date of this order which works out to ₹11,99,932/-.



I. DIRECTIONS OF THE AUTHORITY:

20. Taking into account above facts and circumstances, 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 ₹ 6,37,500/- along with interest of ₹11,99,932/- to the complainant.

(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.

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


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NADIM AKHTAR
(MEMBER)


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DR. GEETA RATHEE SINGH
(MEMBER)