

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 23.11.2022 has been filed 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. On the last date of hearing dated 27.04.2023, it had come to the notice of the Authority that present complaint was filed by Mrs. Aditi Agarwal, Director of complainant company, however copy of board resolution authorizing her to file the complaint was not annexed along with the complaint. Therefore, the Authority had decided to relist the matter for the limited purpose and granted an opportunity to the complainant to place on record/submit the requisite document. Complainant has filed the said document on 06.07.2023. So now the complaint is hereby being decided.


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A. UNIT AND PROJECT RELATED DETAILS

3. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Present and Future projects; Location: Parsvnath City, Sonapat
2.	Date of application by original applicant	16.08.2004
3.	Unit area	500 sq. yards (Pg-2 complaint)
4.	Date of allotment	Allotment not made
5.	Date of endorsement in favour of complainant	27.01.2006
6.	Date of builder buyer agreement	Not executed
7.	Basic Sale Price	₹17,50,000/-
8.	Amount paid by complainant	₹8,75,000/-
9.	Due date of possession	Cannot be ascertained
10.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

4. Facts of the complainant's case are that Mr. Gopal Prasad (original applicant) booked a plot measuring 500 sq. yards in residential colony named 'Parsvnath City' Sonapat, Haryana, by depositing an amount of ₹2,75,500/- against receipt No. 3913 dated 17.08.2004 . The rate of



the plot was agreed at ₹3500/- per sq.yards. and hence, the basic sale price was agreed at ₹17,50,000/-. The copy of the receipt dated 17.08.2004 is annexed as Annexure - C/1.

5. That thereafter, present complainant company purchased the rights against the said booking and applied for transfer of entries and booking rights in its favour. Endorsement in favour of complainant company was made on 27.01.2006. Copy of endorsement letter has been annexed as Annexure - C/3. Though the further amount of instalment was payable only after allotment, but on pretext of transferring the booking rights the respondent demanded the instalment which was not due at all. Hence under compelling circumstances, the complainant had deposited the payments of ₹5,99,500/- against receipt no. PC002657 dated 27.12.2005. In this way against the booking, the total amount of ₹8,75,000/- paid by the complainant is lying deposited with the respondent which is fifty percent of the total value of the plot. The copy of receipt dated 27.12.2005 is annexed as Annexure C/2.
6. It has been alleged that on enquiry, it was transpired that the booking was done and amount was received by the respondent without obtaining the mandatory license for setting up a colony from the Director, Town and Country Planning, Government of Haryana as per The Haryana Development & Regulation of Urban Areas Act, 1975



and Rules, 1976. Hence, respondent clearly violated the said Act, which makes the booking as illegal and makes the respondent liable to refund the amount with interest and damages etc.

7. The complainant had filed the complaint under The Consumer protection Act before the Hon'ble NCDRC, New Delhi, under class action but the complainant was not willing to proceed with the same and hence the same was dismissed for default vide order dated 18.08.222.
8. Till date the respondent has not allotted the plot to the complainant nor ever intimated the development of the project. Even after passing of so many years, the respondent has not completed the project and failed to develop the same as per schedule. Hence, present complaint has been filed.

C. RELIEF SOUGHT

9. The complainant in his complaint has sought following reliefs:-
 - (i) The respondent may kindly be directed to refund the amount deposited against the plot in question, alongwith all statutory compensation/interest/damages.
 - (ii) The respondent may kindly be directed to pay the amount of loss of housing opportunity which should be circle rate as prevailing as on date i.e. ₹17,000/- per sq. yards - booking rate.



D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 08.02.2023 pleading therein:-

10. The present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant is not an allottee of the respondent company and the registration was mere an expression of interest towards the upcoming project of the respondent.
11. There is no 'agreement to sale' between the parties and therefore, relief sought under section 18 of the RERA, Act, 2016 is not maintainable.
12. There is no contravention of the Real Estate (Regulation and Development) Act, 2016 on behalf of the Respondent, hence the present complaint is not maintainable.
13. That the name of Chairman and Managing Director ought to be omitted from the arrays of the complainant because they both are not functioning in their personal capacity in the organization.
14. That the complainant in the present case is a separate legal entity and the complainant has not annexed the board resolution along with the complaint, therefore the present complaint is liable to be dismissed on this ground.
15. That, on 30.07.2004, Mr. Subhash Chand Gupta (original applicant) expressed his interest in the booking of a plot in any of the



new/upcoming project of the respondent and paid ₹2,00,000/- towards the registration.

16. That, neither location nor site of the project was confirmed therefore, the original applicant, while filling the application form gave undertaking that in case no allotment is made, and he shall accept the refund of the amount deposited by him. The relevant clause of the application form is mentioned here under:-

“(f) Though the company shall try to make an allotment but in case it fails to do so for any reason whatsoever, no claim of any nature, monetary or otherwise would be raised by me/us except that the advance money paid by me/us shall be refunded to me/us with 10% simple interest per annum.”

A copy of the application form dated 16.08.2004 signed by the original applicant is annexed with reply as Annexure R-2.

17. That, perusal of clause F of the application form would show that while proceeding ahead with the purchase, the original applicant has clearly understood that no allotment was made in his favour and he has further given the undertaking that in case no allotment is possible in future, he would accept refund with simple interest at the rate of 10% per annum.
18. That, on 27.01.2006, original applicant transferred his interest, rights and liabilities in favour of the complainant i.e., M/s Gravity Financial Services Pvt. Ltd. after submitting the necessary documents in the



office of respondent Company. A copy of endorsement letter dated 27.01.2006 is annexed as Annexure R-3.

19. That, on 17.08.2004, original allottee signed and executed an affidavit-cum-undertaking and indemnity, the said affidavit-cum-undertaking and indemnity clearly stipulates that in case the original allottee is not allotted any plot in new project of the respondent, he shall accept refund of the deposited amount with 9% simple interest per annum. For ease of appreciation CLAUSE 7 of the undertaking is reproduced hereunder:

“That I/We agree that if I/We are not allotted any plot in the Present & Future Projects, then I/We will accept the refund of the deposited money with the Company along with simple interest @ 9 % per annum from the date of acceptance of our nomination by the Company.”

A copy of affidavit-cum-undertaking and indemnity is attached as Annexure R-3.

20. That, the complainant had paid ₹8,75,000/- till date to the respondent company. A copy of the latest ledger is annexed as Annexure R-5.
21. That, at the time of endorsement in favour of the complainant neither the respondent nor his predecessor-in-interest raised any demand for refund. The respondent company made it very clear that there was no allotment made in favour of the original applicant which was never objected by the complainant and in the present complaint he is trying to mislead this Hon'ble authority by citing clauses of some other


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agreement which is not even the subject matter of the present complaint.

22. That, in absence of any agreement to sale, the complainant is bound by the terms & conditions of the application form and affidavit-cum-undertaking and indemnity duly signed by the complainant.
23. That, the complaint filed by the complainant before this Hon'ble Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before this Hon'ble H-RERA, Panchkula as the relief (s) claimed by the complainant does not even fall within the realm of jurisdiction of this Hon'ble Authority, Panchkula as there is neither any allotment nor any agreement to sale which can be adjudicated by this Hon'ble Authority.
24. That, the complainant is not an allottee of the respondent company as per Section 2 (d) of the RERA Act of 2016 as the registration was mere an expression of interest towards the upcoming project of the respondent & purchased the same from open or secondary market. No plot buyer agreement was ever executed with the complainant or with his predecessor-in-interest. No EDC charges have been charged from the complainant.
25. That, the respondent has prayed that the complaint may kindly be dismissed in view of above said submissions.



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

26. During oral arguments both parties reiterated their arguments as were submitted in writing. Learned counsel for complainant submitted that complainant is willing to accept refund of the amount deposited by him along with interest. Learned counsel for respondent also stated that respondent does not have any plot available with them to be offered to complainant, but is ready to refund the amount.

F. ISSUES FOR ADJUDICATION

27. 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. OBSERVATIONS AND FINDINGS OF THE AUTHORITY

28. The Authority has gone through the rival contentions. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes as follows:

(i) The respondent has taken a stand that present complaint is not maintainable for the reason that complainant is not an allottee of the respondent company and registration was mere an expression of interest towards future project of respondent. Before adjudicating upon said issue, Authority has referred to the definition of allottee.

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“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.”

A bare perusal of the definition of the term “allottee”, it is clear that the transferee of an apartment, plot or building who acquired it by “any mode” is an allottee. This may include allotment, sale, transfer, as consideration of service, by exchange of development rights, or by any other similar means. Upon careful perusal of all the terms and conditions of application form annexed as Annexure R-1, it is revealed that original applicant had paid a sum of ₹2,00,000/- for purchasing a plot measuring 400 sq. yards in the present and future project of respondent and it was agreed between the parties that respondent shall allot a residential plot to complainant and in case he fails to do so for any reason whatsoever, advance money paid by complainant shall be refunded to him with 10% interest per annum. Meaning thereby he is a allottee of respondent.

(ii) The fact that the respondent had accepted subsequent other payments from the complainant apart from the initial booking amount which was paid by the original allottee and had issued receipts for the



same clearly shows that respondent had recognised the original applicant as his allottee.

If argument of respondent is accepted that there was no “agreement for sale” between the parties, it would imply that respondent, who is into the business of real estate development, was accepting the payments and issuing receipts to predecessors of the complainant for ‘nothing in return’, which is impossible and hard to believe. Mere fact that allotment letter for a “particular/specific unit” was not issued to original allottee does not mean that he was not an allottee of the respondent. Once respondent has accepted the application form and certain amount from original allottee for purchase of a unit in his project and has agreed to sell the plot as per price mentioned in application form, it was its duty to allot him a unit no. within a reasonable time. Failure on part of the respondent promoter to do so will not affect the rights of applicant as an allottee.

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. The agreement may be in any form/mode. Accepting the payment



towards a unit in present and future project shows there was a meeting of minds on the point that the promoter will give possession in any present or future project developed by respondent. It is natural that in a situation where promoter agreed in the application form to give a plot in a "future project", it would not have been possible to allot a specific plot no. in the application form itself. Furthermore, there is nothing in the application form 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. Therefore, as per documents available on record, clearly shows that original allottee booked a plot in respondent's present and future project and respondent had agreed for 'sale of a plot'. Accordingly, the original allottee was very much allottee. Further the original allottee transferred his rights in favour of the complainant and the respondent endorsed the same. It is pertinent to mention that the definition of allottee as provided under Section 2(d) of the Act of 2016 does not distinguish between original/erstwhile allottee and subsequent allottee. Therefore, the complainant in this case after endorsement in his favour stepped into the shoes of the original/erstwhile allottee and complainant is well within the definition of the term allottee as provided in the Act.

A handwritten signature in blue ink, appearing to read "S. Rathore", is written over a horizontal line.

Hence, objection of respondent that complaint is not maintainable as complainant is not an allottee stands rejected.

(iii) That in this complaint booking was made in 'present and future' scheme in the year 2004; no builder buyer agreement has been executed till date nor has possession of plot been handed over. Therefore, no specific time period has been provided for handing over possession of the plot. Authority observes that in absence of clause with respect to handing over of possession in the plot buyer agreement it cannot rightly ascertain as to when the possession of said plot was due to be given to the complainant. It has been observed that period of 3 years is reasonable time by Hon'ble Apex Court in 2018 STPL 4215 SC titled as M/s Fortune Infrastructure (now known as M/s Hicon Infrastructure) & Anr. Therefore, deemed date of possession works out to be 16.08.2007. However, possession has not been offered till date. Respondent has also expressed its inability to offer possession. For these reasons, that possession was not offered by the deemed date of possession, complainant as per section 18(1) is entitled on demand refund of the amount paid along with interest. Section 18(1) of the RERA Act of 2016 is reproduced below:

18. (1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

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(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act: Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

Complainant is interested to withdraw from the project and wants refund of the amount deposited; respondent has expressed its 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 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.

(ii) As per Section 18 of Act, interest shall be awarded at such rate as may be prescribed. 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 marginal cost of lending rate (in short MCLR) as on date i.e. 26.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

(v) 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;

Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. Hence, Authority directs respondent to refund to the complainant the paid amount of ₹8,75,000/- 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 10.75% (8.75% + 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 calculated at the rate of 10.75% till the date of this order and said amount works out to ₹16,95,053/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 26.07.2023
1.	275500	8/17/2004	561329
2.	599500	12/27/2005	1133724
3.	Total= 8,75,000/-		16,95,053/-

(vi) The complainant is seeking compensation on account of mental agony, torture and harassment. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "M/s

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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 litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

29. 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 ₹25,70,053/- 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.



30. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.



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NADIM AKHTAR
[MEMBER]



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Dr. GEETA RATHEE SINGH
[MEMBER]