



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1446 of 2020
Date of filing:	11.12.2020
Date of first hearing:	24.02.2021
Date of decision:	19.07.2023

Mr. Rajinder Thukral
S/o Sh. Ram Kishan
C/o h. 4641/A, Ajmeri Gate, Delhi-6

....COMPLAINANT(S)

VERSUS

Parsvnath Developers Ltd.
R/o Parsvanath Tower,
Near Shahdra Metro Station,
Shahdra, New Delhi-110032

....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
 Nadim Akhtar **Member**

Present: - Mr. Vikrant Kackria, learned counsel for the complainant
 through video conference.

Mr. Yashvir Singh, learned counsel for the respondent.

Geeta Rathee

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 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.

A. UNIT AND PROJECT RELATED DETAILS

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

S.No.	Particulars	Details
1.	Name of the project	Parvnath City Centre Sonapat, Haryana.
2.	Name of promoter	Parsvnath Developers Ltd.
3.	Date of application by complainant	08.12.2006
4.	Unit area	1129.80 sq. ft
5.	Date of allotment/booking	Allotment not made
6.	Date of builder buyer agreement	Not executed



7.	Basic Sale Price	Not mentioned
8.	Amount paid by complainant	₹12,50,000/-
9.	Due date of possession	Cannot be ascertained
9.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. The complainant / petitioner has applied for allotment of commercial Showroom bearing Plot No.G-14, of 1129.80 Sq. ft (Approx.) in TDI City Mall Railway Road, Sonapat. The same was allotted vide letter dated 07.12.2006.
4. That the complainant / petitioner had made the payment as per the contract agreed into. The respondent had agreed to give the possession of the same within a period of 2 years (24 months) w.e.f. 06.12.2006. The project was taken over by the respondent from Vardaan Buildtech Private Limited. Copy of the /receipt cheque No.471287 & 471288 dated 08.12.2006 & 15.12.2006 for an amount of Rs.12,50,000/- (Twelve Lac & Fifty Thousand Only) are appended herewith as annexure P-1,. That the possession of the commercial space had not been given to the petitioner till date.
5. That the respondent is neither refunding back the money to the petitioner nor offering the possession of the plot as agreed to by them.
6. That because of such irresponsible behavior and such a bad treatment, now the complainant-petitioner is feeling cheated and deceived. This seems

to be fraud played with the complainant-petitioner by using her hard earned money for such a long period of time. On every visit the complainant-petitioner requested the respondent for the possession of residential plot allotted to him but the respondents kept on giving false assurances saying that the same would be given very soon.

7. That the respondent is liable for the payment of interest amount @ 18% to the petitioner from the date of receipt of the payment till the amount is refunded back to him.

8. That further, as per the definition of "interest" provided under subsection (za) of Section 2 of the Real Estate (Regulation and Development) Act, 2016, the rate of interest chargeable by the Promoter in case of default should be equivalent to the rate of interest payable by the promoter/colonizer in case it is in default. For ease of appreciation, definition of "interest" as provided under Section 2 (za) is reproduced hereinafter:-
"(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 there of 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;" Therefore, the statutory provision as mentioned hereinabove should be read into the Buyer's Agreement and the respondent-promoter should be held liable to pay compound interest @18% from the due date of delivery of possession till actual handing over of physical possession. The interest is payable on the instalments/ sale consideration from the date of receipt of the respective instalments by the respondent-promoter.

9. That since the respondent-promoter is at default, the complainant-petitioner is entitled to invoke Section 18 of RERA, 2016.

10. That the respondent-promoter has failed to abide by the contractual terms stipulated in the buyer's agreement and they are in breach. The cause of action to file the complaint is continuing as the respondent-promoter had failed to deliver possession of developed residential unit/project.

11. That the complainant-petitioner have diligently discharged all their obligations as per the apartment buyer's agreement, whereas, the respondent-promoter have failed to perform their obligations stipulated in the Agreement.

12. That the respondent-promoter have failed to develop the project as promised at the time of initial booking/allotment. The complainant petitioner has invested his lifelong earning in the project based on assurances given by


K. Ramesh

the respondent- promoter; however, he has been cheated and harassed. The respondent- promoter has misappropriated the amount paid by the petitioner and the amount has not been put to use for timely development of the project, thus, the petitioner-complainant have lost faith.

13. That since the respondent-promoter are unable to develop the project and handover physical possession of the residential unit, the petitioner is entitled to refund of the entire sale consideration and other charges along with 18% compound interest from the date of respective payments.

C. RELIEF SOUGHT

14. The complainant in his complaint has sought following reliefs:

- (i) In the event that the registration has been granted to the opposite party for the abovementioned project under RERA Act read with relevant Rules, it is prayed that the same may be revoked under Section 7 of the RERA Act, 2016 for violating the provisions of the RERA Act, 2016.
- (ii) In exercise of powers under section 35 of RERA Act, 2016, direct the opposite party to place on record all statutory approvals and sanctions of the project;
- (iii) To compensate the Complainant for the delay in completion of the project and refund the entire amount of ₹12,50,000/- along with interest @ 18% compound interest from dates of respective



installments/realization of the sales consideration by the Respondent.

- (iv) To pay compensation of Rs. 5,00,000/- on account of harassment, mental agony and undue hardship caused to the complainant petitioner on account of deficiency in service and unfair trade practices;
- (v) The complaint may be allowed with costs and litigation expenses of Rs. 50,000/-.
- (vi) Any other relief as this Hon'ble Authority may deem fit and appropriate in the facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 22.07.2023 pleading therein:-

- 15. That the present complaint is liable to be dismissed as the complainant has approached this Honble Authority with malafide intention and unclean hands.
- 16. That in the present case, the respondent has already refunded the amount received against the unit once allotted to the complainant which now stands cancelled.
- 17. That on 14.08.2012, the unit no. GF-014 was cancelled after refunding an amount of Rs. 20,08,028 i.e. Rs. 12,50,000/- towards the principle and Rs. 7,58,028 towards the interest component.



18. That the present Complaint is a result of gross misuse of judicial process and therefore, an exemplary cost may be imposed upon the Complainant for deterrence.
19. That with the refund of full consideration along with interest, the contract between the parties stands concluded and hence, the complaint is not maintainable.
20. That unfortunately, the complainant has indulged into an act of misleading this Hon'ble Authority by not even disclosing the correct facts of the case.
21. That the Complainant not an allottee of the respondent. Therefore, complaint against the Respondent is not maintainable in law.
22. That on 08.12.2006, Mr, Rajinder Thukral (The complainant) had applied for an advance registration for a Commercial Shop No. GF-014 (Ground floor) area ad-measuring 1129.80 sq. in the proposed TD1 City Mall, Sonapat.
23. That on 10.09.2008, the complainant was duly informed that the development rights of the mentioned commercial mall had been taken over by the respondent company and the name of the mall has been changed to "Parsvnath City Centre" Sonapat. A letter with this effect is herewith annexed as Annexure R-1.
24. That due to various reasons beyond the control of the respondent the project could not pick up the pace as was expected when the project was



launched.

25. That in this backdrop, on 14.08.2012, on the request of the complainant the Unit i.e. Shop no. GF-014 was cancelled. A copy of the request submitted by the complainant is annexed herewith as Annexure R-2.

26. That pursuant to the request submitted by the Complainant, the respondent refunded an amount of Rs. 20,08,028/- along with interest to the complainant. Further, it is pertinent to mention that the complainant had paid Rs. 12,50,000 to the respondent company. A true copy of the ledger dated 29.04.2022 is annexed herewith as Annexure R-3.

27. That the respondent has already refunded entire deposited amount along with interest @ 11% p.a i.e, Rs. 20,08,028/- from the date of deposit.

28. That, in view of the submissions made under preliminary objections, preliminary submissions and reply on merits it is respectfully prayed that the present complaint may kindly be dismissed with exemplary cost in the interest of justice.

E. REJOINDER FILED BY COMPLAINANT.

29. That the calculation done by the respondent is incorrect as the amount of interest amounting to Rs. 67,705/- is due to complaint. The calculation done by the respondent is incorrect. The complainant has received the principal amount which is not being disputed. The averments in the reply that the amount of Rs. 20,08,028/- is payable was incorrect. Copy of the



ledger and the interest calculation is being annexed as annexure R-1. That the above amount be ordered to be paid to the complainant.

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

30. During oral arguments both parties reiterated their arguments as were submitted in writing.

F. ISSUES FOR ADJUDICATION

31. 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

32. In the present complaint, it is not disputed that the complainant Mr. Rajinder Thukral has applied for allotment of commercial showroom bearing plot No. G-14, admeasuring 1129.80 sq.ft. in TDI City Mall, Railway Road, Sonipat, which was being developed by Vardaan Buildtech Pvt. Ltd. vide advance registration form dated 8.12.2006. It is also not disputed that an advance payment of ₹ 12,50,000/- was made as per agreement and possession was to be handed over within two years w.e.f. 8.12.2006. It is also not disputed that subsequently the project has been taken over by the respondent i.e. Parsvnath Developers Ltd. from Vardaan Buildtech Pvt. Ltd. in the year 2008.



33. The complainant had pleaded in the complaint that respondent has neither handed over the possession nor has refunded the deposited amount. However, per contra the respondent has pleaded that "The unit" was cancelled on the request of the complainant vide letter dated 14.08.2012 and an amount of ₹ 20,08,028/- i.e. ₹ 12,50,000/- towards the principal and ₹ 7,58,028 towards the interest component was refunded to the complainant. Thus, the entire controversy in the matter revolves around the fact that as to whether the respondent had already refunded the amount to the complainant or not. Perusal of application/letter dated 14.08.2012 made by the complainant (Annexure-R2) shows that the complainant had requested the respondent to cancel "The unit" and refund the amount. Perusal of copy of customer ledger (Annexure-R3) as well as payment receipt (Annexure-R4) goes on to show that the complainant had received the amount of ₹ 20,08,028/- from 20.06.2013 to 01.10.2014 from the respondent and he had also acknowledged the same with thanks.

Not only this, but also the complainant had filed the replication (same is written as rejoinder) but, in the same also, he has accepted the case of the respondent and has given death knell to his own case, as, in the replication, he has not disputed receiving of the amount as claimed to have been paid by the respondent. Thus, it is a classic example of misuse of the quasi-judicial proceedings put into motion on the basis of false and misleading facts.



34. Though, the complainant has claimed that the calculation was wrong, but, this was not his case in the complaint and in replication, he cannot be allowed to develop a case and that too when his case in complaint is totally false and baseless. Furthermore, looking at it from another angle, when the complainant received the amount (on cancellation at his request) in the year up till 2014, then, thereafter, the cause of action cannot be said to have survived; as, had the complainant being having any grievance against the respondent then, he might have approached the appropriate forum then only. Accordingly, at this juncture, after almost 6 years, complainant cannot be allowed to awake and agitate the non-existent issues.

35. Thus, consequent upon the considerable consideration the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act, 2016 is a beneficial/social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sector and to address the grievance of the allottees who have suffered due to the dominant position of the promoter. However, it is a moral obligation on part of a complainant to invoke the provisions of this Act with a clear and bonafide intent and not as a tool/instrument for enrichment.



36. The Authority is of the view that this tendency needs to be curbed with iron hands and as such, this Authority observes that no cause of action survives in favour of the complainant and therefore, present complaint is **dismissed**. The file is consigned to the record room after uploading the orders.



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NADIM AKHTAR
[MEMBER]



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Dr. GEETA RATHEE SINGH
[MEMBER]