



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1447 of 2020
Date of filing:	11.12.2020
Date of first hearing:	24.02.2021
Date of decision:	19.07.2023

Ms. Shivani Thukral
D/o Sh. Rajinder Thukral
R/o h. C-83, Panchsheel Enclave
New Delhi

....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.

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 11.12.2020 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 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	07.12.2006
4.	Unit area	968.40 sq. ft
5.	Date of allotment	07.12.2006



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 CASE AS PROVIDED IN THE COMPLAINT

3. Facts of complainant's case are that in the year 2006 the complainant had applied for allotment of commercial unit no. G-10 measuring 968.40 sq. ft. in a mall named TDI City Mall vide an advance registration form dated 07.12.2006. As per clause (a) of the said advance registration form the allotment was to be made within 9 months of the registration application. The complainant has made payments as per the contract agreed. Complainant had paid an amount of Rs. 12,50,000/- vide cheque no. 464036, 464037 and 464040 dated 07.12.2006 and 02.01.2007. Said receipt has been annexed at page 7 of the complaint. The respondent had agreed to give possession of the same within a period of 2 years w.e.f 06.12.2006. On 10.09.2008, complainant was informed that said mall has been taken over by the respondent company and name of the mall has been changed to Parsvnath City Centre, Sonipat.

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4. That complainant requested the respondent for possession of commercial unit allotted to him but respondents kept on giving false assurances saying that the same would be given very soon. The possession of the said commercial space has not been given to the complainant till date.
5. That the respondent promoter has failed to develop the project as promised at the time of initial booking/allotment. The complainant petitioner have invested his lifelong earning in the project based on assurances given by the respondent however he has been cheated and harassed. The respondent have misappropriated the amount paid by the petitioner and amount has not been put to use for timely development of the project thus the complainant has lost faith.
6. That since the respondent promoter are unable to develop the project and handover physical possession of the unit, the petitioner is entitled to refund of the entire sales consideration and other charges along with 18% compound interest from the date of respective payments.

C. RELIEF SOUGHT

7. 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

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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

8. Learned counsel for the respondent filed a short reply dated 25.01.2021 wherein respondent had taken following preliminary objections:



(i) Present complaint is liable to be dismissed on the ground that the complainant has approached the Hon'ble Authority for the reliefs which are not tenable in accordance with law.

(ii) Complainant is seeking multiple reliefs and thus Hon'ble Authority lacks jurisdiction to decide the present complaint.

9. Thereafter a detailed reply was filed on 22.07.2023. The respondent has stated that in the present case, the respondent has already refunded the part amount Rs. 8,50,000/- received against the unit once allotted to the complainant which now stands cancelled on the request of the complainant.

10. That on 14.08.2012, the unit no. GF-010 was cancelled and part amount of Rs. 8,50,000/- was already refunded to the Complainant. Respondent is ready to refund the balance amount Rs. 11,38,757/- but the complainant has not disclosed this fact in his Complaint before this Honble Authority and therefore, is guilty of concealment.

11. 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.

12. That since the unit in question has already been cancelled; the complainant has no locus to approach this Hon'ble Authority.

13. 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.
14. That the complainant not an allottee of the respondent. Therefore, complaint against the respondent in not maintainable in law.
15. That on 08.12.2006, Ms, Shivani Thukral (The Complainant) had applied for an advance registration for a Commercial Shop No. GF-010 (Ground floor) area ad-measuring 968.40 sq. ft in the proposed TD1 City Mall, Sonapat.
16. 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.
17. 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.
18. That in this backdrop, on 14.08.2012, on the request of the complainant the Unit i.e. Shop no. GF-010 was cancelled. A copy of the request submitted by the complainant is annexed herewith as annexure R-2.


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19. That pursuant to the request submitted by the complainant, the respondent refunded a part amount of Rs. 8,50,000/- to the Complainant. The details of the amount refund are tabulated herein below for the reference:

Deposited amount by the complainant(A)	Rs. 12,50,000/-
Interest on the deposited amount @ 11%	Rs. 8,20,841/-
TDS on interest@10 % `	Rs. 82,084/-
Interest amount to be payable (B)	Rs. 7,38,757/-
Total amount to be payable (A+B)	Rs. 19,88,757 /-
Amount paid to the complainant	Rs. 8,50,000/-
Remaining amount to be paid	Rs. 11,38,757/-

20. 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.

21. It is submitted that the calculation done by the respondent is incorrect as the amount of interest amounting to Rs. 12,91,952/- is due to complainant. He admits that an amount of Rs. 8,50,000/- has been



received by him. It has been stated that the principal amount of Rs. 4,00,000/- and interest amounting to Rs. 12,91,952/- thereby totalling to Rs. 16,91,952 is due from the respondent and not Rs. 11,38,757/- as stated by the respondent in its reply.

F. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

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

F. ISSUES FOR ADJUDICATION

23. 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

24. Authority has heard 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:

In its reply respondent has taken two preliminary objections, first that the complainant has approached this Hon'ble Authority for the reliefs which are not tenable in accordance with law and second that complainant is seeking multiple reliefs and this Hon'ble Authority lacks jurisdiction to decide the present complaint. With regard to these objections taken by the respondent, Authority observes that the complainant has sought the relief of refund of the paid amount along


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with interest and in addition to that the complainant has prayed for revocation of registration granted to the respondent for violating the provisions of RERA; directions to respondent to place on record all statutory approvals and sanctions of the project; compensation on account of harassment mental agony and undue hardship caused to the complainant on account of deficiency in services and unfair trade practice and litigation expenses. The aforementioned reliefs sought by the complainant are within the ambit of the RERA Act, 2016 and Rules and Regulations made thereunder and the Authority too is entrusted with the powers to adjudicate and grant the above-mentioned reliefs except for the relief of compensation which is to be adjudicated and granted by Adjudicating Officer of the authority. In fact the Act itself provides for multiple remedies such as interest on delayed possession or refund along with interest and compensation. There is absolutely no bar or impediment provided under the Act that prohibits the complainant from exercising her rights and seeking parallel relief on failure or non-compliance on part of the respondent. Section 18 provides that for failure to handover the possession of an apartment plot or building in accordance with terms of agreement of sale or as case may be, duly completed before the date specified therein, he shall be liable, in case allottee wish to withdraw from project **without prejudice to any other remedy available** to return the amount with



interest at such rate as may be prescribed. Section 18 further provides that apart from the obligations to handover the possession within stipulated time if the promoter fails to discharge any other obligations imposed upon him under this act or the Rules or Regulations made thereunder or in accordance with terms and conditions of agreement of sale he shall be liable to pay such compensation to the allottees in the manner as provided under the Act. Mere fact that the complainant has filed one common application for multiple reliefs does not make it non maintainable, though the authority shall restrict the adjudication and grant of relief that are within its purview or jurisdiction. For the other relief i.e, compensation, the complainant is at liberty to file a separate application before the Adjudicating Officer. Nevertheless mere seeking the relief of compensation in this complaint does not make present complaint untenable in law especially when the relief sought can be bifurcated.

25. It is not disputed that Ms. Shivani Thukral on 07.12.2006 made an advance registration for commercial shop number GF-013 admeasuring 968.40 ft in the proposed "TDI City Mall Sonipat". It is also not disputed that the payment of Rs.12,50,000/- was made as registration deposit for the shop. However, the respondent has averred that on the request of the complainant the unit i.e., shop number G-10 was cancelled on 14.08.2012 and in pursuant to the said request the

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respondent refunded principal amount of Rs. 8,50,000/- to respondent. Since the unit had already been cancelled by the respondent way back in year 2012, the complainant are no more its allottees, and thus provisions of RERA Act, 2016 are not applicable and the present complaint need to be dismissed on said account. In this regard, the Authority observes that the complainant had applied an advance registration for unit number G-10 in the proposed "TDI City Mall" that was to be developed by Vardaan Buildtech Private Limited. The payment of 12,50,000/- was made on 30.05.2007 vide cheque no. 464036, 464037 and 464040 dated 07.12.2006 and 02.01.2007 in favour of Vardaan Buildtech Private Limited. It is an admitted fact that in the year 2008 the respondent promoter i.e, Parsvnath Private Limited had taken over the development rights of mentioned commercial mall from Vardaan Buildtech Private Limited and accordingly issued a letter dated 10.09.2008 duly informing the complainant about the fact that it has taken over the development rights to develop the commercial mall from the erstwhile developer i.e. Vardaan Buildtech Private Limited and also the fact that the name of mall has been changed from "TDI City Mall" to "Parsvnath City Centre" Sonipat. Vide this letter respondent also requested the complainant to contact it for completion of necessary formalities. Thus it is apparent from the language of the letter that the respondent



had recognised the complainant Shivani Thukral as its allottee thus making it liable for all obligations of the promoter. Though on perusal of letter dated 14.08.2012 there remains no ambiguity with regard to the fact that it is complainant who had requested for cancellation of the shop and refund of the amount paid and acting in pursuance to the request of the complainant said shop was cancelled and part principal amount of Rs. 8,50,000/- was returned. However, the mere fact that shop was cancelled and part payment of Rs. 8,50,000/- was returned would not mean that complainant is not an allottee of the respondent promoter and the provisions of Act are not applicable. Had it been the case that complete amount was refunded to the complainant at that point of time then this plea would have carried some substance. Since, the obligations to repay the amount continued so would be the acknowledged contractual relationship, till the refund of complete payment. Therefore, the plea of the respondent that since the unit has not been cancelled, the complainant does not have locus to file the present case is rejected. In fact the Authority is of the view that in order to put a check on such malpractices by the promoter in exercise of their dominant positions, the legislature enabled this piece of beneficial social legislation to safeguard the interest of aggrieved allottees. Hence, the complainant is well within her rights to seek refund of balance amount along with interest. It is to pertinent to



mention that even the respondent in its reply had agreed to refund the balance amount (left after the payment of 8.5 lacs that already stood paid).

26. It is pertinent to mention that the complainant in its complaint has mentioned that "till date neither possession of the unit has been handed over nor the amount paid has been refunded by the respondent promoter". However, during the course of hearing the respondent drew the attention of the attention of the Authority to the fact that the complainant herself had vide letter dated 15.04.2011 sought refund of the money invested and accordingly received a sum of Rs. 8,50,000/-. It is only after the disclosure by the respondent, the complainant accepted having received Rs. 8,50,000/- of the principal amount, however complainant counsel stated that a balance of Rs. 4,00,000/- and the interest still remains unpaid. The complainant in her replication (same is mentioned as rejoinder) dated 01.02.2023 had accepted that Rs.4,00,000/- principal amount remains unpaid and also disputed calculation of the interest component by respondent promoter in its reply.
27. Since an amount of Rs. 4,00,000/- still remains to be refunded by the respondent out of the total paid amount of Rs. 12,50,000/-. Thus, the obligation to refund the remaining amount paid by the complainant along with interest remains pending on part of the respondent


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promoter therefore, cause of action still survives with the complainant. In view of the above facts and circumstances, Authority is of the considered view that complainant is entitled to refund of remaining principal amount along with interest on the total amount paid. Though the complainant has sought that interest be allowed @18% however same cannot be allowed as interest can only be awarded in terms of RERA Act of 2016 and HRERA Rules of 2017. 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”.

28. 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.


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29. 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. 19.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75%.

30. 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;

31. Accordingly, respondent will be liable to pay the complainant interest from the date amounts were paid till the actual realization of the amount. In this case, complainant has paid an amount of Rs. 12,50,000/- as per receipt dated 30.05.2007 (annexed at page 7 of the complaint). Case of the respondent is that he has already refunded principal amount of Rs. 8,50,000/- as per the details given in the table below:


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Sr. no	Date	Amount
1.	22.02.2013	Rs. 6,00,000/-
2.	01.10.2014	Rs. 2,50,000/-
	Total	Rs. 8,50,000/-

Interest on the amount of Rs. 12,50,000/- has been calculated from 30.05.2007 till 22.02.2013 which works out to be Rs. 7,71,644/-. On an amount of Rs. 6,50,000/- (12,50,000-6,00,000) interest has been calculated from 22.02.2013 till 01.10.2014 which works out to be Rs. 1,12,374/- On remaining amount of Rs. 4,00,000/- interest has been calculated from 01.10.2014 till the date of this order that is 19.07.2023 which works out to be Rs. 3,78,636/-. Said calculations are shown in the table below:

S.No.	Principal Amount	Date of payment	Interest Accrued
1.	12,50,000	30.05.2007	7,71,644/- till 22.02.2013
2.	6,50,000/-	22.02.2012	1,12,374/- till 01.10.2014
3.	4,00,000/-	01.10.2014	3,78,636/- till 19.07.2023
Total			12,62,654/-

32. The complainant is seeking compensation on account of mental agony, torture, harassment along with litigation costs. 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 complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

33. The complainant has also sought relief with respect to revocation of registration under Section 7 of the RERA Act, 2016 for violating the provisions of the RERA Act, 2016 and to direct the opposite party to place on record all statutory approvals and sanctions of the project in exercise of powers under section 35 of RERA Act, 2016, . In this regard it is observed that said reliefs have neither been argued and pressed by complainant during arguments nor are part of the pleadings. Hence, all said reliefs sought by complainant are denied.

H. DIRECTIONS OF THE AUTHORITY

34. 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 ₹16,62,654/- 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.

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



.....
NADIM AKHTAR
[MEMBER]



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