



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Date of decision: 27.07.2023

Name of Builder	Parsvnath Developers Ltd.
Project Name	Parsvnath Mall; Location: Parsvnath City, Sonapat

Sr. No.	Complaint No.	Complainant
1.	2139 of 2022	M/s India Realty Private Limited FF-3 W-122, Greater Kailash, Part-II, New Delhi-110048 Through Archana Tandon, Authorised signatory of the complainant, R/o L-1202, Antariksh Golf view 1, Sector 78, Gautam Budh Nagar, Uttar Pradesh presently at New Delhi.
2.	2140 of 2022	M/s India Realty Private Limited FF-3 W-122, Greater Kailash, Part-II, New Delhi-110048 Through Archana Tandon, Authorised signatory of the complainant, R/o L-1202, Antariksh Golf view 1, Sector 78, Gautam Budh Nagar, Uttar Pradesh presently at New Delhi.
3.	2142 of 2022	M/s India Realty Private Limited FF-3 W-122, Greater Kailash, Part-II, New Delhi-110048

*Katwee*

		Through Archana Tandon, Authorised signatory of the complainant, R/o L-1202, Antariksh Golf view 1, Sector 78, Gautam Budh Nagar, Uttar Pradesh presently at New Delhi.
4.	2144 of 2022	M/s India Realty Private Limited FF-3 W-122, Greater Kailash, Part-II, New Delhi-110048 Through Archana Tandon, Authorised signatory of the complainant, R/o L-1202, Antariksh Golf view 1, Sector 78, Gautam Budh Nagar, Uttar Pradesh presently at New Delhi.

## VERSUS

Parsvnath Developers Ltd.

6<sup>th</sup> Floor

Arunachal Building,

19, Barakhamba Road,

New Delhi 110001

....RESPONDENT(S)

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

**Member**  
**Member**

**Present: -**            Mr. Shahzeb Ahmed, counsel for the complainants through video conference (in captioned complaints)

Ms. Rupali Verma, counsel for the respondent through video conference (in captioned complaints)

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

2 

1. Present complaints have been filed on 17.08.2022 filed 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 fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.
2. Captioned complaints are taken up together as facts and grievances of both the complaints are identical and relate to the same project of the respondent, i.e., Parsvnath Mall situated at Parsvnath City, Sonapat". Therefore, Authority by passing a common order shall dispose of all captioned complaints. **Complaint No. 2139 of 2022 titled India Realty Private Limited versus Parsvnath Developers Ltd.** has been taken as a lead case for disposal of captioned matters.
  - A. **UNIT AND PROJECT RELATED DETAILS**
3. The particulars of the units booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:
  - (i) **Complaint no. 2139 of 2022**

  

---



S.No.	Particulars	Details
1.	Name of the project	Parsvnath Mall Location: Parsvnath City, Sonapat
2.	Date of application by original applicant	17.05.2007
3.	Unit area	866 sq. ft
4.	Date of allotment	Allotment not made
5.	Date of builder buyer agreement	07.11.2007
6.	Basic Sale Price	₹43,19,175/-
7.	Amount paid by complainant	₹15,11,716.25/-
8.	Offer of possession	Not made

#### B. FACTS OF THE COMPLAINT

4. Facts of complainant's case are that on 17.05.2007, Complainant booked a shop/showroom bearing unit no. 32 measuring super built up area of 866 sq. ft. in Parsvnath Mall situated at 'Parsvnath City' Sonipat. Basic sale price of the shop was ₹ 43,19,175/-. Complainant opted for the construction linked plan. As per said plan, complainant paid an advance amount of ₹6,50,870 /- on 17.05.2007 to the respondent. Copy of payment receipt has been annexed as Annexure A-1, A-2 and A-3. Complainant made another payment on 09.08.2007 for an amount of ₹4,28,923/-. Copy of payment receipt has been annexed as Annexure A-4. Complainant again paid an amount of

*Katuse*

₹4,31,917/- on 24.02.2009. Copy of payment receipt has been annexed as Annexure A-6. Therefore, a sum of ₹15,11,716.25/- has been paid to the respondent by complainant till date against basic sale price of ₹43,19,175/-.

5. That shop buyer agreement was executed between the parties on 07.11.2007. As per the said agreement respondent was supposed to complete the construction within 36-6 months from the commencement of construction. Respondent started the construction of the project on 13.03.2008, however only foundation of the project has been laid.
6. That till date the respondent has not completed construction of the said project. Therefore, complainant has filed the present complaint.

**C. RELIEF SOUGHT**

7. The complainant in his complaint has sought following reliefs:
  - (i) Direct the respondent to refund the entire amount of ₹ 15,11,711/- along with 18 % interest to the complainant under section 12 and 18 of the Act;
  - (ii) Take appropriate action against the respondent for violation of Section 7 and 11 of the Act;
  - (iii) Direct the respondent for making payment of litigation fees of ₹1,00,000/- to the complainant;



- (iv) Direct the respondent for making compensation of ₹ 1,00,000/- to the complainant for causing physical harassment, mental agony, misrepresentation and depriving the complainant of its hardcore saving; and
- (v) Pass any other order/direction in favour of the complainant and against the respondent in the interest of justice, fairness and equity.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

Learned counsel for the respondent filed detailed reply on 20.03.2023 pleading therein:

8. That the present complaint is not maintainable in law, in as much as, the relief prayed for in the complaint is barred by limitation & relief contemplated does not fall under the jurisdiction of this Hon'ble Authority.
9. That in the respectful submission of the respondent there is no violation of the Real Estate (Regulation and Development) Act, 2016 on its part so as to attract penal provisions under Chapter VIII thereof. It is clarified that the Project had been registered on 24.10.2017 vide Registration No. 332 of 2017 by the Hon'ble Authority, Panchkula, however, since the respondent-promoter is no longer developing the project for want of financial viability, further registration process may



not be required and this is in consonance with the mandate of Section 3 of the Real Estate (Regulation and Development) Act, 2016.

10. That the present complaint is grossly barred by limitation and this Hon'ble Authority 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 us, State of V.P* and others, 2022 SCC online SC 242, the Hon'ble Apex Court has been pleased to observe that mere representations does 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 latches, therefore, his claim should be dismissed.
11. That the provisions of Real Estate (Regulation and Development) Act, 2016 cannot be applied retrospectively.
12. That the present complaint is not maintainable before this Hon'ble Authority for the reason that the complainant had filed the present complaint in the name of M/s India Realty Limited' whereas on December 2021, allotment has been transfer in the name of M/s India Realty Private Limited'.

7 

- 13 That on 17.05.2007, the complainant booked a shop bearing no. UGF-32 with an area ad-measuring 866 sq. ft. in the project "Parsvnath Mall" at Parsvnath City, Sonipat, Haryana at a basic selling price of Rs. 43,19,175/- and opted for construction linked payment (CLP) Plan.
- 14 That on 07.11.2007, shop buyer agreement (SBA) was executed between the Complainant and the respondent company. Copy of shop buyer agreement (BA) dated 07.11.2007, is annexed herewith as Annexure R-1.
- 15 That till date the complainant had paid an amount of Rs. 15,11,716.25 towards the unit in question to the respondent company. Copy of the ledger is annexed herewith as Annexure R-2.
16. That the complainant has defaulted in making timely payments and he was duly informed about non-payment of instalments through various reminder letters dated 14.04.2008, 21.04.2008, 21.05:2008, 30.06.2008 & 10.11.2008, but the complainant never replied to the reminder letters nor did he clear his dues. Copies of reminder letters dated 14.04.2008, 21.04.2008, 21.05.2008, 30.06.2008 & 10.11.2008, are annexed herewith as Annexure-R-3 (Colly).
17. That there is no intentional delay on the part of the respondent-promoter and the project has been delayed for the reason that the allottees like complainant did not make timely payment. Further, it is



submitted that the Respondent-Promoter is no longer developing the project for want of financial viability.

18. That on 10.07.2021, the respondent- promoter via letter informed the complainant regarding the fact that respondent is not developing the project and the issues that the respondent-promoter is facing. Further, respondent- promoter issued copy of cheque of principle amount to the complainant.

19. That time is not the essence of the shop buyer agreement which had been executed between both the parties. The entire complaint has been drafted on the incorrect interpretation of the clauses of shop buyer agreement and as such no cause of action has arisen in favour of the complainant to invoke jurisdiction of this Hon'ble Authority.

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

20. During oral arguments both parties reiterated their arguments as were submitted in writing. Ld. Counsel for the complainant has filed amended memo of parties dated 21.07.2023 in all the complaints to implead M/s India Realty Private Limited as complainant.

**F. ISSUES FOR ADJUDICATION**

21. 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**

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

(i) Respondent in his reply has taken a plea that this Authority does not have jurisdiction to deal with this complaint. In this regard it is observed that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**Territorial Jurisdiction**

As per notification no. 1 /92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Sonipat district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

**Subject Matter Jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale

Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by learned Adjudicating Officer if pursued by the complainant at a later stage.

(ii) Respondent has raised an objection that captioned complaints are barred by limitation. In this regard, it is observed that since, the promoter as per agreement for sale has till date failed to fulfil his obligations to hand over the possession of the





booked shops in its project or refund the paid amount along with interest and vide letter dated 10.07.2021 the respondent informed the complainant that he is not developing this project and offer to return only principal amount to the complainants. the cause of action is re-occurring and the ground that complaint is barred by limitation stands rejected.

(iii) With regard to plea raised by the respondent that provisions of RERA Act, 2016 cannot be applied retrospectively, it is observed that issue regarding operation of RERA Act, 2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in *Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*. Relevant part is reproduced below for reference:-

*"47. The legislative power to make the law with prospective/retrospective effect is well recognized and it would not be permissible for the appellants/promoters to say that they have any vested right in dealing with the completion of the project by leaving the allottees in lurch, in a helpless and miserable condition that at least may not be acceptable within the four corners of law.*

*48. The distinction between retrospective and retroactive has been explained by this Court in Jay*



***Mahakali Rolling Mills Vs. Union of India and Others***, which reads as under:-

"8. "Retrospective" means looking backward, contemplating what is past, having reference to a statute or things existing before the statute in question. Retrospective law means a law which looks backward or contemplates the past; one, which is made to affect acts or facts occurring, or rights occurring, before it comes into force. Retroactive statute means a statute, which creates a new obligation on transactions or considerations or destroys or impairs vested rights."

49. Further, this Court in ***Shanti Conductors Private Limited and Another Vs. Assam State Electricity Board and Others***, held as under:-

"67. Retroactivity in the context of the statute consists of application of new rule of law to an act or transaction which has been completed before the rule was promulgated.

68. In the present case, the liability of buyer to make payment and day from which payment and interest become payable under Sections 3 and 4 does not relate to any event which took place prior to the 1993 Act, it is not even necessary for us to say that the 1993 Act is retroactive in operation. The 1993 Act is clearly prospective in operation and it is not necessary to term it as retroactive in operation. We, thus, do not subscribe to the opinion dated 31-8-2016 [*Shanti Conductors (P) Ltd. v. Assam SEB, (2016) 15 SCC 13*] of one of the Hon'ble Judges holding that the 1993 Act is retroactive."

50. In the recent judgment of this Court rendered in the case of ***Vineeta Sharma Vs. Rakesh Sharma and Others***' wherein, this Court has interpreted the scope of Section 6(1) of the Hindu Succession Act, 1956, the law of retroactive statute held as under:-

  
J. Rathee



"61. The prospective statute operates from the date of its enactment conferring new rights. The retrospective statute operates backwards and takes away or impairs vested rights acquired under existing laws. A retroactive statute is the one that does not operate retrospectively. It operates in futuro. However, its operation is based upon the character or status that arose earlier. Characteristic or event which happened in the past or requisites which had been drawn from antecedent events. Under the amended Section 6, since the right is given by birth, that is, an antecedent event, and the provisions operate concerning claiming rights on and from the date of the Amendment Act."

51. Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights.

52. The Parliament intended to bring within the fold of the statute the ongoing real estate projects in its wide amplitude used the term "converting and existing building or a part thereof into apartments" including every kind of developmental activity either existing or upcoming in future under Section 3(1) of the Act, the intention of the legislature by necessary implication and without any ambiguity is to include those projects which were ongoing and in cases where completion certificate has not been issued within fold of the Act.

53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of



subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

(iv) Further, respondent has taken another objection that complainant has filed the present complaint in the name of M/s India Realty Limited whereas allotment has been transferred in the name of M/s India Realty Pvt Limited. In this regard it is observed that complainant has filed amended memo of parties on 21.07.2023 to implead M/s India Realty Private Limited instead of M/s India Realty Limited in all the complaints. Said application has been taken on record and allowed.

(v) Respondent in its reply has taken a plea that complainant has defaulted in making payment and various reminders were sent to the complainant for making payments. In this regard it is observed that complainant opted for construction linked plan. There is nothing placed on record by the respondent that shows that construction milestone as per the plan were achieved by the respondent and still complainant has failed to honor the demands. Further, it has been

pleaded by respondent that complainant was informed that respondent was not developing the project on 10.07.2021 and cheque of principal amount was issued to him. In this regard it has been observed that when the respondent received ₹ 15,11,716.25/- till feb 2009 then it cannot be absolved of its liability of paying interest on the said amount. At the time of issuing letter dated 10.07.2021, RERA Act, 2017 already came into force and the respondent was aware of the statutory right that had accrued on favour of the of the complainant with respect to interest.

(vi) In the present complaint booking was made in 'Parsvnath Mall' situated at Parsvnath City, Sonipat. shop buyer agreement was executed between the parties on 07.11.2007. Clause 10(a) of the builder buyer agreement states that the developer shall endeavour to complete construction of the mall within a period of 30 months of commencement of construction with an extended period of 6 months, after receipt of sanction of building plans and all other approvals including environmental clearance, subject to force majeure including any restraints or restrictions from any courts/authorities, non availability of building materials, disputes with contractors/work force and circumstances beyond the control of the developer and subject to timely payments by buyers. Drafting of the clause which states that possession will be delivered within 30+6 from the date of



commencement and receipt of sanction of building plans and all other approvals is vague and uncertain and heavily loaded in favour of the promoter. Incorporation of such clause in the builder buyer agreement by the promoter is just to evade the liability towards timely delivery of unit and to deprive the allottee of his right accruing after delay in delivery possession. Therefore deemed date of possession is calculated from the date of execution of buyer agreement i.e. 07.11.2007 and the same works out to be 07.11.2010 i.e 30+6 months. Complainant in exercise of his rights is interested to withdraw from the project and want refund of the amount deposited; respondent has expressed its inability to offer possession of shops to the complainants. For these reasons, Authority is of the considered view that an innocent allottee who has invested his hard earned money with the hope to own a shop cannot be made to wait endlessly anymore, particularly when the promoter has admitted that it is not in a position to deliver the possession of the plot. Therefore, 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.

Further, Hon'ble Supreme Court in the matter of "**Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others**" has highlighted that the allottee has an unqualified right

  
Allottee



to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) 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 an 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.”

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession.

(vii) 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 (MCLR) 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".*

(viii) 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. 27.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e. 10.75 %.

(ix) 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 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 in the captioned complaint nos. the 2139 of 2022, 2140 of 2022, 2142 of 2022 and 2144 of 2022 total amount along with interest calculated at the rate of 10.75% till the date of this order as per details given in the table below:

S.No.	Complaint No.	Principal Amount	Interest Accrued till 27.07.2023	TOTAL AMOUNT PAYABLE TO COMPLAINANTS
1.	2139 of 2022	15,11,716.25/-	25,40,809/-	40,52,525.25/-
2.	2140 of 2022	12,91,140/-	21,45,814/-	34,36,954/-
3.	2142 of 2022	10,98,674.5/-	18,47,583/-	29,46,257.5/-
4.	2144 of 2022	10,98,675/-	18,46,792/-	29,45,467/-

- (x) Complainant has not pressed upon neither argue for relief no. ii
- (xi) The complainant is seeking compensation on account of mental agony, torture, harassment caused for delay in possession, deficiency

*Rathee*



in services and cost escalation. 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.

#### H. DIRECTIONS OF THE AUTHORITY

23. Hence, the Authority hereby passes this common order in the captioned complaints 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 ₹40,52,525.25/-, ₹34,36,954/-, ₹29,46,257.5/-and ₹29,45,467/-



to the complainants in complaint no. 2139 of 2022, 2140 of 2022, 2142 of 2022 and 2144 of 2022 respectively.

(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.

24. **Disposed of.** Files be consigned to record room after uploading of the order on the website of the Authority.



.....  
NADIM AKHTAR  
[MEMBER]



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